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# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 227

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BURNRITE COAL BRIQUETTE COMPANY, PETITIONER,

vs.

EDWARD G. RIGGS, ALFRED L. KIRBY, AND JOHN P.  
DUFFY, RECEIVERS, ETC.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR CERTIORARI FILED OCTOBER 9, 1925

CERTIORARI GRANTED NOVEMBER 23, 1925

(31,491)





(31,491)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 768

BURNRITE COAL BRIQUETTE COMPANY, PETITIONER,

*vs.*

EDWARD G. RIGGS, ALFRED L. KIRBY, AND JOHN P.  
DUFFY, RECEIVERS, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT

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IN THE  
**District Court of the United States,**  
DISTRICT OF NEW JERSEY.

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No. 3582.

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IN EQUITY.

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EDWARD G. RIGGS,

*Plaintiff,*

*v.*

BURNRITE COAL BRIQUETTE COMPANY,

*Defendant.*

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DOCKET ENTRIES.

May	11,	1922.	Bill of Complaint and Affidavits, filed.
"	"	"	Order appointing Alfred L. Kirby and John P. Duffy, Temporary Re- ceivers and Order to Show Cause, filed.
"	"	"	Oath of Receivers, filed.
"	"	"	Bond of Receivers, filed.
"	18,	"	Petition and Affidavits, filed.
"	"	"	Order to Show Cause why Bill should not be dismissed &c., filed.
"	22,	"	Affidavits, filed.
"	"	"	Hearing on Order to Show Cause why Bill should not be dismissed and re- ceivers discharged. Motion denied.

May	25, 1922.	Subpœna issued.
"	27, "	Subpœna returned, served May 26, and filed.
"	29, "	Order continuing Order to Show Cause, filed.
"	" "	Order continuing Order to Show Cause, filed.
June	6, "	Affidavit of Service, filed.
"	" "	Affidavits of Francis M. Yorsten, filed (2).
"	5, "	Answer filed.
"	19, "	Affidavits on behalf of defendant filed.
"	" "	Reply Affidavits on behalf of defendant filed.
"	" "	Reply Affidavits on behalf of defendant filed.
"	12, "	Affidavit on behalf of complainant filed.
"	" "	Affidavit on behalf of complainant filed.
"	28, "	Affidavit on behalf of complainant filed.
July	11, "	Memorandum filed.
"	13, "	Order making Receivers Permanent, &c., filed.
Aug.	24, "	Petition and Affidavit filed.
"	" "	Order making Receivers party to foreclosure suit, filed.
Oct.	26, "	Petition of Receivers filed.
"	" "	Order to Show Cause why Francis M. Crossman and others should not be adjudged guilty of Contempt, filed.
Nov.	6, "	Motion set aside attempted service, &c., filed.



Nov.	6,	1922.	Answer and Affidavits filed.
"	"	"	Special Appearance of McCarter & English for Francis M. Crossman, filed.
"	"	"	Proof of Service filed.
"	"	"	Acknowledgment of Service of Order filed.
"	"	"	Hearing on Order to Show Cause why Francis M. Crossman and others should not be deemed guilty of contempt. Ordered that Crossman be found guilty—others not guilty.
"	15,	"	Order authorizing Receivers to continue business filed.
"	7,	"	Cause placed on Calendar.
"	28,	"	Order of Substitution of Attorneys for defendant, filed.
Dec.	1,	"	Notice of Motion to settle order on contempt Proceedings, filed.
"	"	"	Notice of Motion to vacate Orders of May 11 and July 13, filed.
"	18,	"	Hearing on Motion to settle Order on Contempt Proceedings.
"	22,	"	Order continuing Receivers filed.
"	26,	"	Order as to Contempt, &c., filed.
Jan.	2,	1923.	Order modifying Injunctive Orders, filed.
"	8,	"	Assignment of Errors filed.
"	"	"	Petition of Appeal and Allowance filed.
"	12,	"	Bond on Appeal filed.
"	"	"	Præcipe for Record filed.
"	"	"	Citation issued.
"	13,	"	Citation returned, service acknowledged. Copy filed.

Jan.	15,	1923.	Continued for November Term.
Feb.	2,	"	Petition filed.
"	"	"	Order for Allowance to Counsel filed.
Apr.	2,	"	Continued for Jan. Term.
Oct.	10,	"	Notice of Motion for settlement of decree on Mandate filed.
"	6,	"	Mandate of U. S. Circuit Court of Appeals reversing order appointing Receivers and for Dismissal of bill, with costs filed.
Jan.	21,	1924.	Opinion filed.
"	24,	"	Order that Receivers Account, filed.
Feb.	14,	"	Exceptions to Report and Account of Receivers, filed.
"	"	"	Notice of Argument of Exceptions, filed.
"	18,	"	Petition of Main Belting Co., filed.
"	"	"	Order to Show Cause why certain moneys should not be paid to Main Belting Co. filed.
"	21,	"	Order of Reference, filed.
"	25,	"	Affidavit of Mailing, filed.
July	16,	"	Report of Special Master filed.
"	"	"	Testimony before Master filed (6).
"	"	"	Exceptions to Report of Special Master and to Account &c. filed.
"	22,	"	Petition and Order to Show Cause why claim of A. L. Kirby, et al should not be paid, filed.
Nov.	26,	"	Notice of Motion to sustain Exceptions to Masters Report, filed.
Dec.	19,	"	Order confirming Report of Special Master for Allowances and Discharge of Receiver, filed.

*Docket Entries*

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Jan.	5, 1925.	Order amending decree, filed.
"	9, "	Stipulation filed.
"	12, "	Assignment of Errors filed.
"	" "	Petition for Appeal and Allowance filed.
"	" "	Bond on Appeal filed.
"	" "	Citation issued.
"	" "	Docketing, &c.
Feb.	4, "	Citation returned, served and copy filed.
"	18, "	Præcipe for Record on Appeal filed.
July	28, "	Mandate of U. S. Circuit Court of Appeals affirming Decree of this Court with costs against Burnrite Coal Briquette Co. filed.
Aug.	14, "	Petition of Receivers and Affidavit filed.
"	" "	Order to Show Cause why property should not be sold, filed.
"	24, "	Order continuing hearing &c. filed.
Sept.	1, "	Hearing on motion for order for sale. Adjourned.
"	3, "	Notice of hearing of Order to Show Cause, filed.
"	" "	Affidavit of Service, filed.
"	4, "	Petition of Appeal from Receivers' Disallowance of claim.

UNITED STATES OF AMERICA, { ss.:  
DISTRICT OF NEW JERSEY, {

I, GEORGE T. CRANMER, clerk of the District Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be a true copy of the original Docket Entries on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of  
(Seal) the said Court, at Trenton, in said District, this fifth day of February, nineteen hundred and twenty-two.

GEORGE T. CRANMER,

*Clerk, District Court, U. S.*

By R. S. CHEVRIER,

*Deputy.*

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF  
NEW JERSEY.

---

IN EQUITY.

---

*Edward G. Riggs,*  
Complainant,

v.

*The Burnrite Coal Briquette Company, a Corporation,*  
Defendant.

---

BILL.

(Filed May 11, 1922.)

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*To the Honorable Judges of the District Court of the  
United States for the District of New Jersey:*

The above-named complainant, Edward G. Riggs, on his own behalf and on behalf of all other stockholders and creditors of the defendant who may elect to become parties to this suit and contribute to the expense thereof, brings this bill of complaint against the defendant and complains and alleges as follows:

*First.*—That the complainant, Edward G. Riggs, of 38 South Portland Avenue, Borough of Brooklyn, County of Kings, and State of New York, resides in the said State of New York, and is an inhabitant, resident and citizen of the said State of New York, and is neither a resident, inhabitant or citizen of the State of New Jersey.

*Second.*—That defendant, the Burnrite Coal Briquette Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and is a citizen and resident of said State, and is neither a resident, inhabitant or citizen of the State

of New York; that said defendant has its principal office and place of business in the City of Newark, County of Essex, and State of New Jersey, in the District of New Jersey, and is in the jurisdiction of this court.

*Third.*—That the grounds upon which the jurisdiction of this court depends, are that this is a suit in equity between citizens of different States, and that the matter in controversy herein exclusive of costs and interest exceeds the sum of three thousand dollars.

*Fourth.*—That the defendant is engaged in the business of manufacturing and selling anthracite coal briquettes. This business is conducted at its plant at 543 New Jersey Railroad Avenue, in the City of Newark, County of Essex, and State of New Jersey, within the jurisdiction of this court.

*Fifth.*—The defendant commenced business on or about September 1, 1920, and has an authorized capital stock of \$1,500,000; of this amount 300,000 was cumulative preferred and 1,200,000 common stock, par value of shares \$1 each. There is issued and outstanding at the present time, approximately 240,000 shares of the preferred stock and about 1,199,400 shares of the common stock.

*Sixth.*—That the defendant is the owner of certain formulas and processes used in the manufacture of anthracite coal briquettes which are of questionable value but which are carried on the books of the company at a valuation of approximately \$602,150; that the defendant has equipment and buildings to the value of approximately \$150,000 and it has on hand a small quantity of raw material worth approximately \$3250, for use in the manufacture of its products, and



finished product, of approximately 400 tons in the value of approximately \$3000.

*Seventh.*—At the time of the incorporation of the company, the defendant company owned a parcel of land facing on New Jersey Railroad Avenue, in the said City of Newark, situate between Alpine and Earl Streets, in the said city and running back to Avenue A in said city and the said defendant company erected on a part of said land the plant in which it manufactures its product. That since the time of the incorporation of the said company, it has purchased an additional plot of land approximately 100 feet on New Jersey Railroad Avenue in the said city of Newark, and running along Earl Street, in the said city of Newark about 200 feet. This said plot is adjacent to the property owned by the said defendant company at the time of its incorporation, and is unimproved. The value of the company's real estate is approximately the sum of \$40,000. The original tract or parcel of land, together with the machinery, buildings and appurtenances thereof, is encumbered by a trust mortgage in the sum of \$100,000 to secure the payment of certain bonds, upon which said bonds were issued, the amount of \$3000 having been sold for cash, and approximately \$40,000 of said bonds issued having been pledged as security for the payment of certain indebtednesses. There is also a purchase money mortgage covering the additional tract or parcel above mentioned, in the sum of \$2350 which said mortgage is now under foreclosure and this said mortgage is held by the Nessler Estate and a subpoena upon a foreclosure bill was served on the defendant company on or about April 17, 1922, so that an answer thereto should be filed forthwith.

*Eighth.*—That the complainant is the owner and holder of 2500 shares common stock of the said defend-

ant company, having purchased same for cash, paying the sum of \$7653.12 for said shares of stock.

*Ninth.*—That the complainant is informed and believes, and therefore avers that the defendant owes other unsecured debts aggregating upwards of \$40,000 which are presently due and payable.

*Tenth.*—That it has become necessary for the defendant to borrow moneys to meet its payroll for the current week and it has in fact become necessary to borrow moneys for the payroll for several weeks past, and the defendant is unable to pay its present immediate obligations; that the immediate result of such failure to pay its obligations will be suits and attachments, and other proceedings against the defendant, and that the property of the defendant is subject to judgments, executions, attachments and garnishment proceedings at the hands of its creditors; that if a receiver be not at once appointed, of all of its assets, the defendant will be subject to litigation of various sorts in the State of New Jersey, and that the assets of the defendant will be dissipated and sacrificed; that certain creditors may seek the preference over other creditors; that the business and formulas and processes of the defendant which are of value will be interrupted and destroyed, and that the benefit of said processes and the good will of the defendant will be lost and the value of its property, merchandise and other assets will be seriously diminished and impaired and if the said assets are not sacrificed by sale on executions, attachments and otherwise, the assets of the defendant will, if properly administered, be conserved for the benefit of the creditors and stockholders, and that it is necessary and desirable in the interest of all the stockholders and creditors of the defendant, that a receiver should be appointed to take charge of the defendant's property

and assets and to dispose of the same for the benefit of its stockholders and creditors and all persons interested therein.

*Eleventh.*—That the said defendant has no cash on hand and no funds to carry on the ordinary business of said company and that it has been carrying on the said business at a great pecuniary loss to the stockholders of said corporation and that the said corporation is about to suspend the business for the reasons aforesaid.

*Twelfth.*—That the business of said corporation cannot be conducted so as to enable said corporation to pay its just debts or carry on its operations with profit to its stockholders and liquidate its claims of creditors, and that its business has been and is being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders, and that a further prosecution by the corporation of its said business would tend to the sacrifice, injury and depreciation of the assets of the said corporation and the rights of the stockholders and creditors; that said business conducted without suspension, may retain the good will of the business, and if said business were continued, the salable value would be greatly increased.

That the general manager of the said defendant company, who has assumed control and charge over the general conduct of the affairs and business of the said defendant company has neglected his duties and improperly performed same, in that he has not given same his personal attention, nor has he given attention to the most important part of the manufacturing process, to wit: the binder, over which he had complete charge, and the materials purchased by him have been of such quality that on account of said materials and the manner of production, the product has been unsatisfactory and not marketable.

That the annual meeting of the stockholders, as provided for, was not called on the first Monday in May, 1922.

WHEREFORE, as your complainant has no adequate remedy at law, and can only have relief in equity, your complainant files this his bill of complaint on behalf of himself and others similarly situated who may come in and contribute to the expenses thereof, and prays for equitable relief as follows:

1. That the rights of your complainant and of the other stockholders and creditors the defendant may be ascertained and decreed, and that the Court will fully administer the property and funds in which your complainant is interested and will for such purpose marshal all the assets of the said defendant company, to ascertain the several and respective liens and priorities existing thereon, and to decree and enforce the rights, liens and equities of the said defendant, and ultimately will cause said property and assets, or their proceeds and said funds, to be distributed among those as ascertained to be legally or equitably entitled thereto, in accordance with their several respective rights and interests.

2. That for the purpose of preserving and protecting the property and assets of the defendant company, and that they may be held together, operated and ultimately sold or otherwise disposed of as a going entirety, a receiver or receivers be appointed to take charge of and to manage and operate the property and assets of the said defendant company of every kind and description.

3. That said receiver or receivers be authorized and empowered to take possession of the plant, property assets and business of the defendant company,

and to operate the said plant and to continue to conduct the said business and to employ such agents, servants and workmen as may be necessary from time to time for the conduct of the said business and to continue its existing manufacturing-selling business and financial agreements, arrangements and relations that the said receiver or receivers deem advisable until the further order of the Court.

4. That the said receiver or receivers may make and perform contracts for the manufacture and sale of the products which the defendant company has, or is engaged in manufacturing and may incur any and all obligations necessary and proper, including the purchase of materials and supplies, the employment of labor and in any other manner requisite therefor, and may carry out and perform any such contract heretofore made by the defendant company.

5. That the said receiver or receivers be authorized to demand, sue for, collect, receive and take into possession, all the goods, chattels, rights, credits, moneys, effects, lands, tenements, books, papers, choses in action and all other property whatsoever of the defendant company, and to employ counsel and to institute, prosecute and defend suits at law or in equity for the recovery of any assets, property, damages or demands belonging to or existing in favor of said defendant company, and to settle and compound all debts or other claims whatsoever of said company.

6. That the said defendant company, its officers, agents and employees, be enjoined from selling, transferring, disposing of, or in any manner interfering with any of the property of the defendant company or taking possession of the same or interfering with the said receiver or receivers in the performance of his or their duties.

7. That the officers, agents, servants and employees of the defendant company be forthwith required to transfer, convey, assign and deliver to the said receiver or receivers, or his or their duly authorized agents or representatives, all the property and assets of the defendant company and to take such action as may be necessary thereto.

8. That said receiver or receivers be authorized and empowered among other things, to ascertain, determine and allow the claims of creditors, subject to appeal to this Honorable Court on any disputed question.

9. That your complainant and the creditors and stockholders of the said corporation may be paid what is justly due them and that the said corporation be enjoined from exercising any of its franchises and from receiving any debts due to it and from paying and transferring any of its moneys and effects, and that it may be decreed to be insolvent.

10. That the Court may, if deemed advisable, proceed under the statutes of the State of New Jersey, and that an injunction issue under the provisions of the statute and that the receiver be given all the powers and charged with all the duties imposed upon such a receiver by the statutes, and that complainant may have such other and further relief as the nature of the cause may require and as may seem just and proper.

11. That a writ of subpoena be issued out of this Honorable Court in due form of law and according to the course and practice of this court, directed to the said defendant, commanding it on a certain day to be named therein, under certain penalty, but not under oath (an answer under oath being expressly waived)



to answer all and singular the matters and things hereinbefore set forth and complained of, and further to perform and abide by such order, direction and decree in the premises, as the Court shall see meet.

And your complainant will ever pray.

EDWARD G. RIGGS,

*Complainant.*

JOSEPH L. SMITH,

*Solicitor for and of*

*Counsel with Complainant.*

---

AFFIDAVIT TO BILL.

(Filed May 11, 1922.)

---

STATE OF NEW YORK, {  
COUNTY OF NEW YORK, { ss.:

EDWARD G. RIGGS, of full age, being duly sworn according to law, on his oath deposes and says that:

I reside at 38 South Portland Avenue, in the Borough of Brooklyn, County of Kings and State of New York, and am the complainant in the foregoing bill named, and I have read the bill of complaint and know the contents thereof, and the same is true to the best of my knowledge.

I further state that the Burnrite Coal Briquette Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware; that said defendant has its principal office and place of business in the City of Newark, County of Essex and State of New Jersey, in the District of New Jersey, and that the defendant is engaged in the business of manufacturing and selling anthracite coal briquettes. This business is conducted at its plant at 543 New Jersey Railroad Avenue, in the City of New-

ark, County of Essex and State of New Jersey; that defendant commenced business on or about September 1, 1920, and has an authorized capital stock of 1,500,000; of this amount 300,000 was cumulative preferred, and 1,200,000 common stock, par value of shares \$1 each. There is issued and outstanding at the present time, approximately 240,000 shares of the preferred stock, and about 1,199,400 shares of the common stock.

The defendant is the owner of certain formulas and processes used in the manufacture of anthracite coal briquettes which are of questionable value to the best of my knowledge and belief, but which are carried on the books of the company, I believe, at a valuation of approximately \$602,150; the defendant has equipment and buildings which I am informed and believe are valued at approximately \$150,000, and it has on hand a small quantity of raw material which I am informed and believe is worth approximately \$3250, for use in the manufacture of its products, and has on hand finished product which I am informed and believe is approximately valued at \$3000.

At the time of the incorporation of the company, the defendant company owned a parcel of land facing on New Jersey Railroad Avenue, in the said City of Newark, situate between Alpine and Earl Streets, in the said city, and running back to Avenue A in said city, and the said defendant company erected on a part of said land the plant in which it manufactures its product. Since the time of the incorporation of the said company, it has purchased an additional plot of land approximately 100 feet on New Jersey Railroad Avenue in the said City of Newark, and running along Earl Street, in the said City of Newark, about 200 feet. This said plot is adjacent to the property owned by the said defendant company at the time of its incorporation, and is unimproved. The value of the company's real estate, I am informed and believe, is ap-

proximately the sum of \$40,000. The original tract or parcel of land, together with the machinery, buildings and appurtenances thereof, is encumbered, I am informed and believe, by a trust mortgage in the sum of \$100,000 to secure the issuance of certain bonds, upon which said bonds were issued, the amount of \$3000 having been sold for cash, and approximately \$40,000 worth of said bonds issued having been pledged as security for the payment of certain indebtednesses. There is also a purchase money mortgage covering the additional tract or parcel above mentioned, in the sum of \$2350, which said mortgage is now under foreclosure and this said mortgage is held by the Nessler Estate and a subpoena upon a foreclosure bill was served on the defendant company on or about April 17, 1922, so that an answer thereto should be filed forthwith.

I am the owner and holder of 2500 shares of common stock of the said defendant company, having purchased same for cash, paying the sum of \$7653.12 for said shares of stock.

I am informed and believe that the defendant owes other unsecured debts aggregating upwards of \$40,000 which are presently due and payable.

I am informed and believe that it has become necessary for the defendant to borrow moneys to meet its pay roll for the current week and it has in fact become necessary to borrow moneys for the pay roll for several weeks past, and the defendant is unable to pay its present immediate obligations, that the said defendant is unable to pay, and I believe that said corporation has no cash on hand or funds to carry on the ordinary business of said company, and that it has been carrying on the said business at great pecuniary loss to the stockholders of said corporation, and is about to suspend its business for the reasons aforesaid.

The general manager of the said defendant company who has assumed control and charge over the

general conduct of the affairs and business of the said defendant company has neglected his duties and improperly performed same, in that he has not given same his personal attention, nor has he given attention to the most important part of the manufacturing process, to wit: the binder, over which he had complete charge, and the materials purchased by him have been of such quality that on account of said materials and the manner of production, the product has been unsatisfactory and not marketable.

The annual meeting of the stockholders, as provided for, was not held on the first Monday in May, 1922.

EDWARD G. RIGGS.

Subscribed and sworn to before me this tenth day of May, 1922 A. D.

FRANK E. HALL,  
(Seal) *Notary Public.*

New York County No. 57. New York  
Registry No. 3050.  
Term expires March 30, 1923.

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STATE OF NEW YORK, { ss.: No. 7116 Series B.  
COUNTY OF NEW YORK, {

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court for the said county, the same being a Court of Record, do hereby certify, That Frank E. Hall, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a notary public in and for such

county, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such notary public and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court and county, the tenth day of May, 1922.

JAMES A. DONEGAN,

(Seal) *Clerk.*

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**ORDER.**

(Filed May 11, 1922.)

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This matter being opened to the Court by Joseph L. Smith, solicitor for and of counsel with the complainant, and upon reading and filing the bill and affidavit, and the Court being satisfied that the relief therein prayed for should be decreed,

It is, on this eleventh day of May, 1922, ORDERED, ADJUDGED and DECREED that Alfred L. Kirby of Newark and John P. Duffy of Elizabeth be and they are hereby appointed temporary receivers of the defendant, The Burnrite Coal Briquette Company, and of all the property of the said defendant, real, personal and mixed of whatsoever kind and description and wheresoever situate, including the business now conducted by it and all the lands, buildings, premises and property owned, leased or operated by it, and all furniture, fixtures,

materials and supplies, books of account, records and other books, papers and accounts, cash in bank, on deposit and in hand, money, debts, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills and accounts receivable, rents, issues, profits and income accruing and to accrue, as well as all interest, easements, privileges and franchises, and all assets of every kind; that the said receivers be and they hereby are authorized immediately to take possession of the same and run, manage and operate the business heretofore conducted by the defendant, The Burnrite Coal Briquette Company, and the premises and property, in such manner as will in their judgment produce most satisfactory results, so that the operation of the said business of the defendant company shall until further order of this court be continued in the same manner as at present, or in an economical manner, and in the best interests of the creditors and stockholders of the defendant company; and to exercise the authority and franchise of the defendant; and to preserve and protect its property and business; and to protect the title and possession and secure and continue the business of the same; and in their discretion to employ and discharge and fix the compensation of all officers, attorneys, managers, agents and employes, and to make such payments and disbursements as may be needful and proper in so doing; that the said receivers be and they hereby are authorized to make appropriate payments on account of accruing interest on mortgages, taxes and other necessary charges, and also so far as may be needful to pay off current necessities for labor and supplies and the said receivers are hereby authorized and empowered to purchase such additional materials as they in their judgment may deem necessary for the proper continuance of said business of the defendant and to pay therefor; and to issue receivers' certificates for



the purpose of raising money for the continuance of the business in such sum as may be authorized by order of this court; and the said receivers are hereby authorized and empowered to institute and prosecute all such suits as may be necessary in their judgment, for the proper protection of the property, business and trust hereby reposed in them and otherwise to defend all actions instituted against them as receivers, or against said company, and also appear in and conduct the prosecution or defense of any actions or suits now pending in any court wherein this defendant is a party, the prosecution or defense of which will, in the judgment of the said receivers be necessary for the proper protection of the property entrusted to them or the interests and rights of stockholders and creditors connected therewith; and the said receivers are hereby authorized in their discretion from time to time, out of the funds coming into their hands to pay the expenses of operating the said property and business and executing their trust. The said receivers are hereby ordered to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust and preserve proper vouchers for all payments made by them on account thereof; and the said receivers are hereby authorized and directed to employ such agents, attorneys and servants as may be necessary for the proper discharge of their duties as such receivers.

And it is further ORDERED that a bond of said receivers in the sum of twenty-five thousand dollars, that they will well and truly perform the duties of office and duly account for all moneys or property which may come into their hands and obey and perform all things which they shall be directed to do, with sufficient sureties, to be approved by a judge of this court, to be forthwith filed in the office of the clerk of this court, and

It is hereby further ORDERED that each and every of the officers, directors, agents and employes of the defendant The Burnrite Coal Briquette Company, and all other persons whomsoever, be and they are hereby required and commanded forthwith, upon demand of the said receivers or their duly authorized agent or agents, to turn over and deliver to said receivers or their duly constituted representatives any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property under his or their control; and each of said directors, officers, agents and employes is hereby commanded and required to obey and perform such orders as may be given to them from time to time by the said receivers or their duly constituted representative in the conduct and operation and management of the property of the defendant company, and

It is further ORDERED that the said defendant, The Burnrite Coal Briquette Company, and its officers, directors, agents and employes and all other persons claiming to act by or through or under the defendant, and all other persons whomsoever, be and they hereby are enjoined from interfering in any way with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties or their managing and operating the business and property of the defendant and from instituting or prosecuting any suits or actions against the defendant company, at law or in equity or otherwise, or against the receivers without leave of the court; and any party in interest may apply for further directions, and

It is further ORDERED that the said receivers be and they are hereby authorized to issue receivers' certificates to an amount not exceeding \$25,000 in such denominations as they deem proper, which said certifi-

ates shall bear interest at the rate of 6 per cent. and shall be issued at not less than 95 per cent. of par, and which said certificates shall be entitled to priority in payment over all creditors of the defendant company other than real estate mortgages and expenses of administration. The proceeds of such certificates may be used by said receivers in the business of the company and for the expenses of administration, and

It is further ORDERED that a copy of the bill and affidavit heretofore filed in the above stated cause, which need not be certified, be served upon an officer of the company within ten days from the date hereof, and that the parties hereto show cause before this court, at the United States Post Office Building in the City of Newark, New Jersey, on the twenty-ninth day of May, 1922, at 10.30 o'clock in the forenoon (daylight saving time) of said day, why such receivership should not be continued during the pendency of this suit, and upon the hearing thereof, any other creditor or stockholder of the defendant or other parties interested, may be heard.

CHARLES F. LYNCH,  
*Judge.*

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PETITION.  
(Filed May 18, 1922.)

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*To the Honorable Judges of the United States District Court, District of New Jersey:*

The petition of the Burnrite Coal Briquette Company, a corporation of the State of Delaware, the defendant in the above-entitled cause, respectfully shows:

That it is the owner of certain real estate, situated on New Jersey Railroad Avenue in the City of Newark,

County of Essex and State of New Jersey, which is equipped with machinery and is used as a plant or factory for the manufacture of coal briquettes, a substitute for anthracite coal, and that the real estate used as such factory is of the value of at least one hundred and fifty thousand (\$150,000) dollars, and the equipment and machinery therein contained is also of the value of not less than one hundred and fifty thousand (\$150,000) dollars; that it has on hand merchandise finished and unfinished of the value of about fifteen thousand (\$15,000) dollars, and other materials used in the processes of manufacture and fixtures and laboratory equipment and vehicles of the value of over six thousand (\$6000) dollars and accounts receivable of about fourteen thousand (\$14,000) dollars, making its total assets at least the sum of three hundred and thirty-five thousand (\$335,000) dollars.

That its said factory building and the machinery and equipment therein contained are encumbered only to the extent of approximately five thousand (\$5000) dollars.

That its credit is good and unimpaired and it is able to secure all of the merchandise and funds necessary for the operation of its business upon its own credit.

That it is indebted in all to the extent of about fifty-one thousand five hundred (\$51,500) dollars, and that none of its creditors are pressing or demanding payment, and none of its obligations have been dishonored, and that its creditors are willing to extend credit for their said claims and for payment thereof until such time as it can readily pay the same.

That its business has been profitable and successful and that it has always had sufficient funds to carry on the same or was readily able to raise such funds by the use of legitimate credit, and that it was not

about to suspend its business at the time of the filing of the bill of complaint herein or at any other time, and that its business has been up to the time of the appointment of the receivers herein conducted for the benefit and advantage of its stockholders and creditors and without prejudice to them or either of them and with safety to the public.

That the receivers herein were appointed without notice to it and have entered into possession of its property and discharged its employes therefrom and have admitted to its said factory one George Mashek to examine the secret special machinery of the petitioner and its secret processes of manufacturing its products tending to its great injury and to the injury of its stockholders. The said receivers have also taken possession of the books of your petitioner and have caused accountants to examine same into the secret affairs of its business.

Your petitioners further show that said receivers have failed to accept coal or the binder material ordered by it, which said material it is otherwise difficult to obtain and which are necessary and essential in the manufacture of petitioners' products, thereby seriously injuring and impairing petitioners' business and credit.

Your petitioner therefore prays, that an order may be made directing the said receivers to desist and refrain from admitting any person or persons into the factory of your petitioner or to examine its books, processes or machinery and that they, the said receivers, desist and refrain from interfering with, removing or impairing the property of said petitioner or incurring any indebtedness or charge against the property of your petitioner or from disclosing to any person, firm, or corporation any information secured by them or either of them in the course of their said receivership, relative to the business or affairs of your peti-

tioner, and that they, the said receivers, and the complainant herein show cause before this court at such time and place as may be fixed in said order why they should not be discharged as such receivers.

And your petitioner will ever pray, etc.

GROSS & GROSS,  
*Solicitors of Petitioner.*

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STATE OF NEW JERSEY, { ss.:  
COUNTY OF HUDSON, {

FRANCIS M. CROSSMAN, being duly sworn on his oath, deposes and says, that he is the president of the Burnrite Coal Briquette Company, the petitioner in the foregoing petition, and that he has read said petition and that the contents thereof are true.

F. M. CROSSMAN.

Sworn and subscribed to before me this seventeenth day of May, 1922.

EUGENE H. VREDENBURGH,  
*Master in Chancery*  
*of New Jersey.*

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AFFIDAVIT OF FRANCIS M. CROSSMAN.  
(Filed May 18, 1922.)

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STATE OF NEW JERSEY, { ss.:  
COUNTY OF HUDSON, {

FRANCIS M. CROSSMAN, being duly sworn on his oath, deposes and says: I am president of The Burnrite Coal Briquette Company, a Delaware corporation, the defendant in the above entitled cause. I am the owner of considerable real estate in New Jersey, in

my own right, which is worth over \$110,000, and president of the Signal Mountain Coal Company, whose place of business is at Crossman, Tennessee, and vice-president of the Chattanooga & Montlake R. R. Co., and vice-president of the Anthracite Concentrate Company of Auburn, Pennsylvania, and New York City, and my total holdings and my financial worth is upward of \$500,000.

I have been president of the said Burnrite Coal Briquette Company and a member of its board of directors ever since its inception, and am myself a coal operator and fuel engineer and am thoroughly familiar with all of the business of said Burnrite Coal Briquette Company.

Of the common stock of said company there is issued about 1,200,000 shares, of the par value of \$1 each of which I am personally the holder and owner of about 400,000 shares, and of the 215,000 shares of preferred stock issued by said company I am personally the holder and owner of about 52,000 shares.

I have read the bill of complaint filed herein and the affidavit of the complainant thereunto annexed, and know that the filing of the said bill of complaint is the culmination of threats frequently made to me by the said complainant, in which he threatened that unless we bought up his stock, that he would cause us trouble. There is no reasonable ground for this proceeding except to embarrass the defendant company.

The Burnrite Coal Briquette Company, the defendant in this suit, is the absolute owner of its plant, consisting of real estate and machinery in the City of Newark. It was the owner of considerable property consisting of raw and finished materials, outstanding accounts and valuable secret processes for the manufacture of coal briquettes which have proved a source of great profit to said company. The physical prop-

erty of the company is conservatively valued as follows:

The real estate, consisting of its manufacturing building and the land upon which it stands,	\$150,000
Machinery, all improved to date,	150,000
Merchandise unfinished, about	11,500
Merchandise finished, about	3,500
Other materials used in the process of manufacture, about	2,000
Fixtures and laboratory equipment, about	2,000
Auto truck and touring car, about	2,300
Accounts, receivable, about	14,000
making a total of assets value of	\$335,300

The said properties and machinery above mentioned cost the company, and are carried on its books, considerably more than the figures above stated.

With reference to the property facing on New Jersey Railroad Avenue, in Newark, between Alpine and Earl Streets, mentioned in paragraph 7 of the bill of complaint, this property is not included in the properties above valued, but was purchased by the company for \$4700, part of which was paid by purchase money mortgage of \$2350, which said mortgage is in process of foreclosure. This mortgage has not been paid by the company because an agreement had been entered into with the mortgagee whereby the time for the payment thereof had been extended and the same was not due at the time of the filing of the bill in said foreclosure suit, nor is the same yet due, and an answer had been filed by the said company to said foreclosure suit setting up said defense, and a date for the hearing of said foreclosure suit has not as yet been set. This property is unimproved and used by the company merely as a dumping ground for its ashes.



The property of said defendant company was originally acquired with funds raised by the sale of its common and preferred stock, and from time to time its plant was extended and improved and new and additional machinery and equipment provided for its business. Its total indebtedness, including taxes, assessments and indebtedness of all kinds, on May 1, 1922, was about \$51,500. The company's indebtedness on January 21, 1921, was about \$65,800, besides the tremendous increase in the value of the company's properties, due to additional equipment and extension and enlargement of the plant, at considerable cost and expense. The company's main property, conservatively valued at \$150,000, was until recently free and clear of any lien or encumbrance whatsoever. For the purpose of discharging all of the company's current obligations, however, its board of directors decided to sell the company's bonds, secured by a trust mortgage of \$100,000 on its said factory property. Of these bonds only \$5000 were sold and therefore the factory property is encumbered only to that extent. These bonds are to mature in ten years. Of the company's indebtedness of approximately \$51,500 above mentioned, there is due to me alone over \$30,000. I am willing, and have heretofore expressed my willingness to accept said bonds in satisfaction of the indebtedness so due to me, and the great majority of the other creditors of the company, to whom approximately \$21,000 is due, have likewise signified their desire to accept said bonds in satisfaction of the indebtedness due to them. In fact, none of the company's creditors has been pressing or demanding payment of moneys due them, and have continually supplied the company with merchandise upon credit without question. On February 1, 1922, the company's indebtedness was almost \$54,000 and has been reduced as aforesaid with an increase in the

interim of its stock on hand and in its equipment of over \$2000 in value. Whenever necessary I was willing to and did lend to the said defendant company, moneys necessary to meet its weekly pay roll, without any security. The reason why it was necessary to so borrow money was because I preferred to see the company apply its income to a reduction of its current obligations. Part of the company's indebtedness was represented by promissory notes and trade acceptances and never has one of these been dishonored. It is not true, as stated in the bill of complaint herein, that the company has been carrying on its business at a great pecuniary loss to the stockholders of the company, and that it is about to suspend its business. The contrary is the fact. The business of the company has been, up to the time of the appointment of the receivers herein, profitably conducted and advantageously to its stockholders. Neither is it true, as stated in the bill of complaint, that the business of the corporation cannot be conducted so as to enable it to pay its just debts or carry on its operation with profit to its stockholders and liquidate the claims of its creditors, and that its business has been and is being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders, and that a further prosecution by the corporation of its said business would tend to the sacrifice, injury and depreciation of the assets of the said corporation and the rights of the stockholders and creditors. As a matter of fact the said corporation solely, by means of its business, has been meeting all of its just debts, and out of the profits earned by it, has been reducing the same and its business has been conducted solely to the advantage of stockholders and creditors; and any injury caused thereto is caused by the act of the complainant in applying for the appointment of receivers in this cause.

That it is untrue, as stated in the bill of complaint, that the general manager of the defendant company has neglected his duty and improperly performed the same. As a matter of fact, I have personally had charge and supervision of the company's business. Mr. Francis M. Yorston has until recently been manager of its business. When I ascertained that he was not performing his duties, the attention of the board of directors of the defendant company was called thereto and he was immediately discharged; whereupon I assumed the entire management of the company's business during the absence of the board of directors.

None of the officers or directors of said defendant company receive any compensation for their services and I render my services gratuitously.

Mr. Joseph Smith, attorney for said complainant Riggs, attended on behalf of his said client, the stockholders' meeting of the said defendant company, held in May, 1921, and although Mr. Riggs, for whom he appeared, held an insignificant number of shares of stock, compared with the holdings of those present at said meeting, we agreed to elect two members of the board of directors, to be named by him, which we did. These were George M. Rubinow and Harry C. Stackle, both of whom became members of the board of directors, as representing the minority stockholders of said company.

The receivers herein were appointed without notice to the company and have entered into possession of its property; and as they understand nothing about the company's business, great, serious and irreparable loss is being suffered by the said defendant company and its stockholders and creditors. I am advised that no legal basis is set forth in the bill of complaint herein for the appointment of a receiver, and that the affairs of the said defendant company should be left to the

management of those in whom its stockholders have reposed their trust, to wit, its board of directors. The receivers herein have admitted to the factory of said defendant company, one George Mashek, of the Mashek Engineering Company, with whom the said defendant company had had considerable difficulties, and who is one of its strongest competitors; and the said Mashek has examined into the process of manufacture by said defendant company, of its products. The mode and process of manufacture in the defendant company's business, is one of its principal assets not considered above, however, and the conduct of said receivers in so admitting the said Mashek, tends to the great injury of the said defendant company and its stockholders.

The said receivers have also discharged all of our men, which tends to disrupt our organization. It is a very difficult matter to replace these men who have already acquired a thorough knowledge of the means of operation in our factory. Unless we can secure the re-employment of the men thus discharged without delay, it will be necessary for us, upon the discharge of the receivers herein, to secure new men and first break them in, which means a considerable loss in time and money to the company.

I am ready, as I always have been, and as have been all of the creditors of the said defendant company to lend to it all of the financial assistance which it might from time to time require, upon the faith of its credit.

FRANCIS M. CROSSMAN.

Sworn and subscribed to before me this seventeenth day of May, 1922.

EUGENE H. VREDENBURGH,  
*Master in Chancery*  
*of New Jersey.*

**AFFIDAVIT OF HENRY C. RODEMANN.**  
(Filed May 18, 1922.)

STATE OF NEW JERSEY, { ss.:  
COUNTY OF HUDSON, {

Henry C. Rodemann, being duly sworn upon his oath deposes and says: I reside in the city of Newark, where I conduct my business as a coal merchant. I am treasurer of the Burnrite Coal Briquette Company, the defendant in the above-entitled matter, and under a bond to it for the faithful performance of my duties as such in the sum of \$10,000. I am thoroughly familiar with the business of the said defendant company and with its property and the value thereof. I have read the affidavit of Francis M. Crossman hereto annexed and know the contents thereof, and the same are true as far as relates to the business and property, as well as the value thereof of the said defendant company. I know that the values of the company's real estate, machinery, merchandise and other items set forth in Mr. Crossman's affidavit are at least of the values mentioned by him in his said affidavit, and in fact I know that the said figures are in most instances too low, and that the said properties cost the company a great deal more than the amounts mentioned by Mr. Crossman in his affidavit and are carried on its books for considerable more. The book values are made up of cost, less depreciation. I know that the company's total indebtedness on January 1, 1921, was about \$65,800 and on May 1, 1922, was about \$51,000, and that between said dates the company's assets by way of increase to its equipment, improvement and extension of its factory property were considerably enhanced. The reduction of the company's indebtedness as aforesaid, and the enhancement of the

value of its assets were due to the application of the profits of its business and the sale of its capital stock. I know that the company has been operating a profitable business and that it is the owner of processes for the manufacture of coal briquettes; which processes are of very great value and are not included in the estimate of the company's assets set forth in Mr. Crossman's affidavit. The company now has, in addition, offers from out of town concerns for the payment to it of large royalties for licenses to manufacture coal briquettes under its processes. The large majority of creditors of the company, taking in approximately 80 per cent. of its total indebtedness, have expressed their willingness and desire to accept, in satisfaction of their claims, ten-year bonds of the company, secured by a mortgage on its factory property which has hitherto remained free and clear of any and all encumbrances, and is alone at least of the value of \$150,000 besides the machinery and equipment therein contained, which is also worth at least \$150,000. The company's creditors have never pressed for or demanded payment of the moneys due to them, and have at all times been willing to furnish the company with all of its requirements upon credit without security. Mr. Crossman has at all times advanced, and is still willing to advance to the company, all moneys that may be required by it in the conduct of its business without security, and funds were in fact advanced by him because he felt that the company's income should be first applied to pay for its property and equipment in full, and that thereafter it might pay to him the advances so made by him. In fact Mr. Crossman has expressed his willingness to accept the company's ten-year bonds in payment of over \$30,000, so due to him and included in the aforesaid indebtedness of the company. The company's affairs were being properly

managed by its board of directors and in its absence by Mr. Crossman, who has devoted practically all of his time to the company's business gratuitously.

Upon the appointment of the receivers herein they placed accountants upon the company's books, whereupon the secrets of the business of the company might be obtained. They also stopped all of the business of the company and thereby prevented the sale of the company's manufactured product, which it had on hand ready for disposal for cash.

A large quantity and other materials have arrived, which had heretofore been ordered by the company, and are on the railroad sidings. These have been rejected by the receivers and are now subject to large charges for demurrage. The coal is the most important ingredient in the manufacture of the company's product, and owing to the present coal strike it is difficult to obtain an adequate supply of the same, and all orders of coal are subject to contingencies of great delay. Unless the company can obtain the possession of this coal, great and irreparable loss will be suffered by it. The same is true of binder materials of which a car has also arrived and owing to the appointment of the receivers, has not been delivered and we are now unable to locate it. A serious injury to and impairment of the company's credit is also likely to result because of the rejection of this coal and the non-acceptance of the binder material as aforesaid.

Mr. Joseph Smith, attorney for said complainant Riggs, attended on behalf of his said client, the stockholders' meeting of the said defendant company, held in May, 1921, and although Mr. Riggs, for whom he appeared, held an insignificant number of shares of stock, compared with the holdings of those present at said meeting, we agreed to elect two members of the board of directors, to be named by him, which we did.

These were George M. Rubinow and Harry C. Staacke, both of whom became members of the board of directors, as representing the minority stockholders of said company.

The receivers herein were appointed without notice to the company and have entered into possession of its property; and as they understand nothing about the company's business, great, serious and irreparable loss is being suffered by the said defendant company and its stockholders and creditors. I am advised that no legal basis is set forth in the bill of complaint herein for the appointment of a receiver, and that the affairs of the said defendant company should be left to the management of those in whom its stockholders have reposed their trust, to wit, its board of directors. The receivers herein have admitted to the factory of said defendant company one George Mashek, of the Mashek Engineering Company, with whom the said defendant company had had considerable difficulties, and who is one of its strongest competitors; and the said Mashek has examined into the process of manufacture by said defendant company, of its products. The mode and process of manufacture in the defendant company's business, is one of its principal assets not considered above, however, and the conduct of said receivers in so admitting the said Mashek, tends to the great injury of the said defendant company and its stockholders.

The said receivers have also discharged all of our men, which tends to disrupt our organization. It is a very difficult matter to replace these men who have already acquired a thorough knowledge of the means of operation in our factory. Unless we can secure the re-employment of the men thus discharged without delay, it will be necessary for us, upon the discharge of the receivers herein, to secure new men and first



break them in, which means a considerable loss in time and money to the company.

HENRY C. RODEMANN.

Sworn and subscribed to before me this seven-  
teenth day of May, 1922.

EUGENE H. VREDENBURGH,  
*Master in Chancery*  
*of New Jersey.*

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AFFIDAVIT OF GEORGE M. RUBINOW.  
(Filed May 18, 1922.)

STATE OF NEW JERSEY, {  
COUNTY OF HUDSON, { ss.:

George M. Rubinow, being duly sworn, on his oath  
deposes and says:

I am engaged in the business of tool manufacturer  
and am the owner of considerable real estate, and re-  
side in the City of Newark, County of Essex and State  
of New Jersey, and am a member of the board of  
directors of the Burnrite Coal Briquette Company, the  
defendant in the above-entitled cause. I have read the  
affidavit of Francis M. Crossman, hereunto annexed,  
and know the contents thereof, and the same are true.  
I am the owner of 5900 shares of the common stock of  
said corporation and 200 shares of its preferred stock.  
I attended all meetings of the board of directors of  
said company and there was at least one of such meet-  
ings held each month. I also frequently visited the  
factory and office of said company. I know the value  
of the company's assets and that they are at least of  
the values placed upon them by Mr. Crossman in his  
said affidavit. I myself advanced by way of loan to

the said company sums of money from time to time so that the company at one time was indebted to me for such loans to the extent of about \$5000. It has reduced its indebtedness by payments to me so that there is now due to me on account of my said advances only about \$1500. I have not pressed for payment of my said claim nor have I demanded payment thereof, and I am perfectly willing to wait until such time as the company is adequately able to pay me, or to accept in payment the company's ten-year bonds. I know that the company has been operating profitably and has been reducing its indebtedness and whatever moneys it needed to meet its current obligations were raised by the sale of its products, and the moneys necessary to meet payroll when necessary, were advanced by Mr. Crossman, as he deemed it more advisable that the company apply its income to a reduction of its indebtedness for the purchase of equipment and machinery, he being willing to wait until said indebtedness was fully satisfied, for repayment to him of moneys due to him.

I was elected one of the directors of the said company as the nominee of its minority stockholders at the suggestion of Mr. Joseph Smith, attorney for the complainant Edward G. Riggs. I know that the company's affairs were being honestly and efficiently managed by its board of directors and Mr. Crossman, all of whom served the company without compensation.

GEORGE M. RUBINOW.

Sworn and subscribed to before me this seventeenth day of May, 1922.

HARRY B. SEMBE,  
*Master in Chancery*  
*of New Jersey.*

**AFFIDAVIT OF JOHN B. BUCHAN.**  
(Filed May 18, 1922.)

STATE OF NEW JERSEY, {  
COUNTY OF HUDSON, { ss.:

John B. Buchan, being duly sworn, on his oath deposes and says:

I am a mechanical engineer and superintendent and was employed as such by the Burnrite Coal Briquette Company, the above-named defendant, up to the time of the appointment of the receivers herein, and still continue in my said employment at the factory of said defendant company in the City of Newark. I know that the defendant company's plant is thoroughly equipped and well improved for the conduct of its business which is the manufacture of coal briquettes. That certain of the machinery and equipment used in the manufacture of the defendant company's products are of special and unique type and of a secret nature and that the processes used by the defendant company in the manufacture of its coal briquettes is also secret and different from that employed by others in the manufacture of a similarly designed product. That upon my employment I was instructed by Mr. Crossman, the company's president and general manager, in the operation of the company's plant and in the manufacture of its products and was directed to operate the said plant efficiently and to keep all of the operations therein conducted absolutely secret and to keep all strangers out of the factory, so that the designs of our special machinery and the secret processes of our manufacture should not become known.

After the appointment of the receivers herein, one George Mashek of the Mashek Engineering Company, which is engaged in the business of manufacturing

special machinery which are designed for the manufacture of goods under special processes for the manufacture of coal briquettes and similar products, was admitted to the said factory of the said defendant under direction of the said receivers, to examine the company's machinery and also the processes used by it in the manufacture of its product. He made such examination and sought to solicit information with respect thereto from some of the employees who were under my direction and from me. I refused to give him the information he desired, but nevertheless he examined our specially designed and secret machinery. This disclosure is greatly injurious to the business interests of the said defendant company.

JOHN B. BUCHAN.

Sworn and subscribed to before me this seventeenth day of May, 1922.

HARRY B. SEMBE,  
*Master in Chancery*  
*of New Jersey.*

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ORDER TO SHOW CAUSE.

(Filed May 18, 1922.)

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This matter being opened to the Court by Messrs. Gross and Gross, and upon reading the duly verified petition and affidavit filed herein by the Burnrite Coal Briquette Company, a corporation, it is on this eighteenth day of May, 1922,

ORDERED, That the complainant herein and the receivers heretofore appointed by this court of all the property of the defendant company, show cause before this court on the twenty-second day of May, 1922, at ten-thirty o'clock in the forenoon of that day, in the Post Office Building, at Trenton, New Jersey.

why complainant's bill of complaint should not be dismissed and the receivers aforesaid heretofore appointed should not be dismissed.

ORDERED, That true copies of the petition upon which this order is predicated and the affidavits thereunto annexed, and of this order be served upon the complainant and the receivers heretofore appointed within two days from date hereof, which copies may be certified by the solicitors of the petitioner.

ORDERED, That until the further order of the Court the receivers heretofore appointed be and the same are hereby restrained from taking any further action with respect to the property of the defendant company other than the retention of the custody thereof.

FURTHER ORDERED, That the receivers be restrained from admitting persons other than custodians into the plant of the defendant and that they desist from an examination of the books, papers and accounts thereof.

J. L. BODINE,  
*Judge.*

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AFFIDAVIT OF A. L. KIRBY AND JOHN P.  
DUFFY.

(Filed May 22, 1922.)

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STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

A. L. Kirby and John P. Duffy, of full age, being duly sworn according to law on their respective oaths depose and say:

We have read the petition of the defendant company and the affidavits of Francis M. Crossman, Henry C. Rodemann, George M. Rubinow and John B. Buchan heretofore filed in behalf of the said defendant company in the above stated cause.

We were appointed temporary receivers in the above stated cause by this Honorable Court on Thursday, May 11, 1922, and after duly qualifying commenced our duties. We immediately placed insurance on the property after much difficulty and made a general investigation and inspection of its properties. We continued in our employ all employees we found to be in the employ of the defendant company at the time we were appointed until the work then on hand was completed. After the completion of that work we retained in our employ the plant engineer, superintendent and foreman, together with the bookkeeper and night watchman, in addition placing therein our own custodians and representatives.

We found that the company had not been manufacturing for some time prior to our appointment and that there was no necessity or need of immediately commencing to manufacture and in fact we did not have materials on hand to begin to manufacture, if we had so desired. There were approximately 500 tons of finished product to fill orders with and but one unfilled order at the time we took possession. There was an order for two carloads, which order we were unable to fill, due to the fact of receiving a restraining order of this Honorable Court dated the eighteenth day of May, 1922.

We found upon investigation that several creditors of the defendant company had been demanding payment. On the date of our appointment the defendant company only had approximately \$138.75 balance as shown by their check book. We did not have sufficient moneys to meet the pay roll which said defendant company had incurred prior to our appointment.

We have co-operated and asked for the co-operation of the former officers and employees of the defendant company.

We engaged the accountant firm of Puder & Puder to examine the books in order to furnish us with a statement as to the condition of the defendant company and we respectively refer to such a report of said firm of accountants which is submitted herewith. We were unable to complete our investigation of the books due to the restraining order of this Honorable Court dated May 18, 1922. We found on taking possession of this property that the defendant company had been having their books audited by a firm of accountants in New York City and we consented to the firm of accountants completing their audit, which was for the fiscal year of 1921, and in fact, we advised these accountants that they complete their work in the employ of the receivers as they wanted to know whether or not we would be responsible for their compensation after they had completed the audit and we told them that we would for the number of days they were employed from the date of our appointment as receivers of the defendant company.

We further communicated with Mr. George Mashek, of the Mashek Engineering Company, which concern built the plant of the defendant company. This was done for the purpose of getting a report from the concern who built the plant in order to know the exact physical condition of the property. We respectfully refer to a report of this concern, which is submitted herewith.

Our plant superintendent, Mr. Buchan, had previously advised us that before operating, it would be necessary to make certain repairs and in our judgment we deemed it best to have an inspection made before commencing operations. We do not believe that there could be anything of a secret nature in the conduct of defendant company's manufacture to Mr. Mashek, the person who designed and delivered the

alleged formula and process to Mr. Crossman, whom we requested to make an inspection. We have been informed that the formula is contained in a safe deposit vault of the Fidelity Union Trust Company, which said safe deposit vault we, as receivers, have never opened, but simply served a notice of our appointment upon said safe deposit company in order that no one but ourselves would have access to the safe deposit vault.

We, as receivers, under advice of counsel refused to accept any coal that was offered to be delivered to us because we found that we had no immediate need for same and further we did not believe that we were in a position to accept such coal without first knowing the conditions under which it came, the quality of the merchandise and the terms of payment.

We endeavored to secure possession of a car of starch which we were informed is an ingredient in the binder; but the railroad company under instructions from the shipper refused to deliver such car, having received instructions to stop delivery; but we succeeded, however, in securing the release of this car by the railroad company and received same on Friday, May 19, 1922.

We are informed by counsel that a foreclosure action has been instituted against a certain piece of property of the defendant company and that no agreement was made with the mortgagee by the defendant company to extend the time and payment of same; but that notice was given to the defendant company to strike out the fictitious answer filed by the said defendant company. And also that the acknowledgment of service was made by the counsel of the defendant company after the appointment of said receivers without their authority or permission and after the order restraining said defendant company



and its agents from such an act had been served upon it. We have devoted practically all our time and either one or the other of us have at all times been at the premises and plant of the defendant company. The back pay due as wages to the workmen has not been paid up to Friday, May 19, 1922.

After our appointment and qualification as receivers a notice of a meeting of the stockholders residing in Union County, New Jersey, was brought to our attention, a copy of which notice is attached hereto, from which it appears that this notice of a meeting of the stockholders was sent out under date of May 8, 1922, which was at least three days before the filing of the bill in this cause.

We attended this said meeting which was held in Elizabeth, New Jersey, on Tuesday, May 16, 1922, at which were present approximately 150 stockholders and the census of it was the approval of the action.

Since our appointment up to the time the order of this Honorable Court, dated May 18, was served upon us we continued to sell as large amount of briquettes as possible and during that time we filled all orders which, however, were not large. We answered all inquiries and quoted prices in an endeavor to secure whatever orders possible.

We inquired from the accountants of the defendant company what the operating loss of the defendant company was for the year of 1921, and were advised that it amounted to approximately \$90,000. This amount included an item of depreciation of about \$47,000. In fact the only employees whom we laid off were laborers who were working and repairing the railroad spur, and these men we retained until the work was completed.

We communicated with all debtors who owed the defendant company any money and we might say that

we found that the president and concerns with which he was affiliated, together with the treasurer and secretary, were indebted to the defendant company in substantial amounts. We also found I. O. U.'s in the petty cash box from the officers of the defendant company.

We have succeeded in collecting seventeen accounts in the ten days in which we have been acting as receivers, amounting to \$1070, and have expended the sum of \$503.99 for the receivers' pay rolls and have on hand a balance of \$1111.11.

We further state that we found that there was an alleged agreement between the defendant company and the president to pay him certain royalties and that he recently received a large amount of bonds of the defendant company to secure payment of the amount alleged to be due him. Our investigations show that all of the coal purchased by the defendant company was purchased from companies in which the president of the defendant company is alleged to hold a large interest.

ALFRED L. KIRBY,  
JOHN P. DUFFY.

Subscribed and sworn to before me this twenty-second day of May, 1922.

ARTHUR HARRIS,  
*Master in Chancery*  
*of New Jersey.*

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Elizabeth, N. J., May 8, 1922.

Fellow Stockholders:

We, the undersigned, are taking the initiative in calling a meeting of the stockholders of the Burnrite Coal Briquette Company, residing in Union County and vicinity.

It has come to our attention that certain matters vital to the best interest of the stockholders should be brought to the attention of all who have money invested in the corporation.

The meeting is for the purpose of making known the matter which seriously concerns us as stockholders. It is of absolute importance to your interest that you attend. Should this be impossible, some one should be present to represent you with full power to act in your capacity.

The meeting will be held at TURN HALL, High Street, near Elizabeth Avenue, Elizabeth, N. J., at 8 o'clock P. M. (daylight saving time) TUESDAY EVENING, MAY 16, 1922.

Signed

CLEMENS GEILE,

263 Third St., Elizabeth, N. J.

FELIX MARX,

355 Fulton St., Elizabeth, N. J.

GUSTAV BARTH,

141 Reid St., Elizabeth, N. J.

H. K. BORSCHERDING,

360 E. Jersey St., Elizabeth, N. J.

CARL WILL,

841 Walnut St., Roselle, N. J.

A. RUMELSPCKER,

136 Scheerer Ave., Newark, N. J.

H. G. HEBENDAHL,

321 Fulton St., Elizabeth, N. J.

E. G. GOMMEL,

321 Fulton St., Elizabeth, N. J.

ERNEST HERMANS,

919 Lafayette St., Elizabeth, N. J.

AFFIDAVIT OF GEORGE J. MASHEK.  
(Filed May 22, 1922.)

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

GEORGE J. MASHEK, of full age, being duly sworn according to law, on his oath deposes and says:

I have read the petition and affidavits by Francis M. Crossman, Henry Rodemann and George Buchan attached thereto.

On last Friday, May 12, 1922, I was called by Mr. Michael N. Chanalis and advised that the above-named company was placed in the hands of receivers and that receivers would like to meet me the following day, May 13, 1922, at eleven o'clock. I met Mr. A. L. Kirby, one of the receivers on May 13, 1922. I advised him that we were originally the designers and engineers of the plant and furnished the processes originally used in the plant for the manufacture of coal briquettes, the plant being equipped with our patented machinery, especially built for this purpose.

The receiver then asked me if I would examine the plant and make a report as to its condition, what parts needed replacing, etc., which work I commenced the following Monday, May 15, 1922, and on this day of May, the 20th, the report is practically completed.

In reference to revealing any secret process or methods of manufacturing, I desire to say that the plant today is arranged in the same identical manner as called for on our drawing, and as erected and installed by us and under our direction.

A number of the machines have been allowed to run down so that many parts are in such condition that they are liable to break almost any time, causing numerous delays, etc. Some of the machines have been

so badly neglected, especially the mixer, that parts are missing, making it impossible to make a good mixture which is evidenced by the burning of the briquettes.

The only change of any consequence since we erected the plant, has been made in the piping in the binder in the manufacturing part of the plant.

The ingredients are the same as were given by me to Mr. Crossman, which he subsequently called the Crossman binder. This formula covering the binder was given to Mr. Crossman by me some little time before the company was incorporated, when he was located in Pittsburgh, Pa., trying to promote a briquette company there, which fell into bad repute on account of the methods pursued in financing.

Later, while in Pittsburgh, I wrote him a letter giving full particulars how this formula should be used, how compounded, as Mr. Crossman, not being an engineer or a chemist, or having any briquette experience in the manufacturing of coal, could not remember from day to day.

I find in the plant that the changes consisted particularly of piping and mixing the binder in such a way so as to use a process used by others for many years for which process we have also equipped the plant.

As to the ingredients used at the present time the information given me was given me by the present employees, with the difference that some secret addition was added so as to eliminate the sulphurous odor of the product, for which provisions have been made in the original design and lay-out, of the plant, but never used until recently. Mr. Crossman had nothing to do with the invention of the binder or its development.

As previously stated, the formula for the manufacture of the smokeless binder is a part furnished with each plant equipment we sell to those who desire to use it. The details of this formula are not usually

made public but are known in this plant, as well as other plants by all the employees. It is not patented or in my opinion is not patentable. This formula was given by me to Mr. Crossman when one of our associates first interested him to try to finance a briquette plant.

This plant is especially built and equipped with machinery designed by us long before this plant was contracted for or before I met Mr. Crossman, and is especially designed and arranged to use this formula and as previously stated, there has been no material change made.

I find other changes made that are insignificant or such as any mechanic can make in operating a new plant, slight improvements in screening and spouting, etc. The only other particular change that was made was transferring the motor from the top of the threstle to the ground and drawing elevator No. 1 by means of rope.

I also find that the oven as originally erected from our drawing has been altered in detail, especially in the damping arrangement which is not as efficient as the plant was originally equipped, requiring additional employees to watch the buckets so that they do not drag themselves against the tripper and also that the brick work housing the oven iron work has been removed, causing a loss of heat which compels the operation of the plant at a considerable lower output per hour than it was designed for, showing lack of knowledge and inefficiency in operating a vital part of the plant.

From information received from the employees and noting the condition of the plant, the plant never has been properly operated to obtain the best efficiency and results.

The plant is not in condition at the present time to produce as good briquettes as can be produced in

this plant first, on account of the two preliminary driers being in such bad condition, worn and leaking, that their capacity is reduced to about one-third; there are no hammers in the pulverizer so that the coal passing through it does not get reduced, and in its present state, is too coarse to make satisfactory briquettes.

This was admitted to me by the superintendent.

One of the patented elements of the mixers, as mentioned previously, was removed, so that a good mixture cannot be obtained.

The oven being open reduces the capacity of the plant. These particular defects should be remedied at once, and are all due to negligence and incompetent management and using unsuitable material for making briquettes.

I find the coal dust in stock, of which there is a small quantity, to be mostly unsuitable to make briquettes for domestic purposes, on account of its high ash content.

In my examination of the plant, all the questions I asked of the employees were willingly answered. The purposes of asking these questions was not only to find what condition the machinery was in, how it operated, what additions there were in certain parts of the plant, but also to find out if the same ingredients to make the binder had been used as when the plant was originally built according to the formula I gave Mr. Crossman, and find that the ingredients are practically the same, and a somewhat better briquette is being produced at the present time than was the case at the beginning of operation of the plant, due to the employees acquiring the art of operating to better efficiency and producing a better product.

I am president of the Mashek Engineering Company, the oldest corporation in the United States making a specialty of building briquetting machinery for

all kinds of fuels, which machinery, the same as installed in this plant, is covered by a number of United States patents obtained many years before I met Mr. Crossman.

Mr. Crossman is not a competitor of ours. He has no machinery of his own. The only engineer he employed has been a young man we brought up whose only knowledge of briquetting is what has been obtained from us and Mr. Crossman has never built a briquetting plant as far as I know, nor a plant for any other purpose.

I wish to again emphasize the fact, as far as I am concerned, or any of the employees of our company, or any others associated with us or those connected with plants which we have equipped, and which are in operation, there is no secret process in this plant which is unknown to those familiar and capable of running and operating a briquette plant.

To operate a plant of this type requires steady, hard working men, which we train, usually in two to three weeks' time and did so with this plant. It does not require a long time to make efficient employees if they are properly directed.

We have equipped and there are in operation other briquetting plants producing as good and some considerably better product than the Burnrite Coal Briquette Company plant, using process and machinery very similar to that as installed in the Burnrite Coal Briquette Company plant, among which I may mention the Anthracite Briquette Co., Ltd., plant in Toronto, the Anthracite Briquette Company plant in Sunbury, Pa., the American Briquette Co. plant in Lykens, Pa., the Delparen Anthracite Briquette Co. in Parrot, Va., and a number of other plants located in the Far East, such as Japan, China and Korea and also the Stott Briquette Co. of Superior, Wisconsin



and the Berwind Coal Company, of Superior, Wisconsin.

GEORGE J. MASHEK.

Subscribed and sworn to before me this twentieth day of May, 1922 A. D.

DAVID M. SATZ,  
*A Master in Chancery  
of New Jersey.*

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AFFIDAVIT OF FRANCIS M. YORSTON.

(Filed May 22, 1922.)

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STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

FRANCIS M. YORSTON, of full age, being duly sworn according to law, on his oath deposes and says:

I reside in the Borough of Highland Park, County of Middlesex and State of New Jersey.

I am a stockholder of the Burnrite Coal Briquette Company owning and holding 1000 shares of common stock. I am secretary and a director of the defendant corporation.

I first became actively connected with this company on March 1, 1920, in the capacity of plant manager and continued in that capacity.

I have read the petition heretofore filed by the defendant company and the affidavits of Francis M. Crossman, Henry C. Rodemann and George M. Rubinow heretofore filed in the above stated cause.

The defendant company, at the time it purchased the property in 1918, I think, upon which the plant is now situate, paid \$24,500 for it. There was placed on the plant and machinery of this company by action of

the directors, on or about February 1, 1922, a first mortgage in the sum of \$100,000, to secure a bond issue in that sum, payable February 1, 1932. This action of the directors was without the consent of the stockholders. There has been issued approximately \$3500 of these bonds for cash, the proceeds of which went to pay current expenses of the defendant company as the sales were made and the money came in.

Part of that money was used for pay rolls. The defendant company did not have sufficient cash on hand to meet its current obligations. Creditors were frequently calling at the office, telephoning and writing, and at times accounts were put into the hands of attorneys and the agency of R. G. Dun and others to enforce payment.

All contracts for supplies were made by the general manager, F. M. Crossman. All orders for materials were sent out over my signature, excepting orders for coal.

On several occasions it was necessary when notes or trade acceptances became due, to have the bank return them as the funds were not available to meet them. In matters where we tried to get credit extended, it was very difficult.

So far as the business is concerned, there was never any time, excepting the first four months of operation when a straight hydrolene briquette was made, that the business showed any profit.

There were several dividends declared on the preferred stock in November, 1920, and in April, 1921. A script dividend was declared payable on and after November 15, 1921, of which there is about \$6000 worth of script unredeemed. The moneys which were set aside for the payment of dividends, were secured through the sale of the company's treasury stock of the Burnrite Coal Briquette Company of New Jersey

which was a corporation formed for the purpose of building a plant on the Raritan River adjacent to Perth Amboy, N. J., and for which the Burnrite Coal Briquette Company, the defendant company, contracted to give them the exclusive rights to the use of the formulas and process for a consideration of \$1,500,000 worth of stock of the said Burnrite Coal Briquette Company of New Jersey.

This plant has not been erected and no work in erecting same has been done.

The defendant company has never at any time had sufficient funds to adequately and efficiently carry on its business and at the time of the appointment of the receivers it did not have sufficient funds available or on hand to meet current obligations as the money in the bank was almost negligible, in fact, just prior to the appointment of the receivers I put in personal money in order to meet the pay roll and on numerous occasions have gone without my own salary in order that the other employees might have their weekly pay.

It is not difficult to obtain binder material.

There was an operating loss in the year 1921 of approximately \$90,000.

There has been no extension of the plant nor any new equipment added, excepting the replacing or changing of location of new machines to take the place of the old, since its erection.

This business is being operated at a loss and at a disadvantage and prejudicial to the interests of its stockholders and creditors, and it is not able to meet its current obligations on account of the class of product that is being turned out, which has not been a repeater of sales in sufficient magnitude to build up the business.

On the day of the appointment of the receivers there had been a special directors' meeting called; a

copy of the notice of said meeting is attached hereto and made a part hereof.

The second reason that this meeting was called was to act on and ratify a proposed contract between this company and Jonathan P. Edwards; a copy of this proposed contract is also attached hereto and made a part hereof.

It has always been said by Mr. Crossman that the secret formula and process was written out and deposited in the safety deposit vault, showing clearly just how the briquettes were to be made and the materials used therein. This formula I have never seen in writing and have been governed entirely by the verbal instructions as to the formula, given me by Mr. Crossman personally. These instructions in turn, have been given to the plant superintendent and are fairly well known by a number of the people employed by the defendant company. So far as the defendant's statement that it is very difficult to replace those men, who it is claimed, have acquired a thorough knowledge of the means of operation, it is my opinion that it would be only a matter of two or three days to break in an ordinary laboring type of man to do what is necessary to carry out the process used in the manufacturing.

Regarding the statement that the defendant, Mr. F. M. Crossman, is always ready to advance money for the continuance of the business, I can say that on hundreds of occasions, he has stated to me, both in person, and over the telephone, that he is absolutely through and will not lend the company another cent, and that he would see the plant closed up first, before he would again advance any money, and has stated on various occasions that he did not have sufficient money to meet his own personal obligations.

Mr. George M. Rubinow, one of the directors of the company, advanced to the company, for the pur-

pose of paying current expenses, the sum of approximately \$5000, a portion of which has been repaid to him.

The president of the concern, Mr. F. M. Crossman, received no salary as president, but is under contract with the company as general manager for a period of ten years, to receive a royalty of 15 cents per ton for the first 100,000 tons, and after the business reaches the above amount, he is then to receive a royalty of 10 cents per ton. All of the above royalties have been credited to his account and he now has notes and bonds as securities for the payment thereof, bonds having been issued and given to him in the sum of \$28,600, so that there is actually delivered bonds under a trust mortgage of \$100,000 to Mr. Crossman in the above-mentioned sum, and in addition thereto there has been approximately \$3500 of such bonds sold for cash to stockholders.

An additional \$10,000 of these bonds were taken by Mr. Crossman to be delivered to Jonathan P. Edwards as security in the matter of coal accounts.

FRANCIS M. YORSTON.

Subscribed and sworn to before me this twentieth day of May, 1922 A. D.

ARTHUR HARRIS,  
*Master in Chancery*  
*of New Jersey.*

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Agreement made this                      day of April, 1922,  
by and between the BURNRITE COAL BRIQUETTE COM-  
PANY, a corporation, duly organized under the laws of  
the State of Delaware, hereinafter called the "Corpo-  
ration" and the BURNRITE BRIQUETTE & COAL COMPANY,  
a common law trust organization.

## WITNESSETH

WHEREAS, the Corporation is the exclusive owner of a certain chemical process known as "BURNRITE BINDER and BURNRITE PROCESS," to manufacture anthracite coal briquettes, and

WHEREAS, The Burnrite Briquette & Coal Company as a common law trust, wishes to engage in the business of selling fuel and manufacture coal briquettes, and

WHEREAS, It is the desire of the Burnrite Briquette & Coal Company to procure for the said proposed Burnrite Briquette & Coal Company the right to manufacture under the BURNRITE PROCESS and using the BURNRITE BINDER.

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

That the Corporation grants unto the said Burnrite Briquette & Coal Company the exclusive license and right to manufacture briquettes under the BURNRITE PROCESS and to use the BURNRITE BINDER in the States of New York, New Jersey, Massachusetts, Maryland and Pennsylvania, excepting in the cities of Newark, New Jersey, and Perth Amboy, New Jersey, and at no other place.

That the said Burnrite Briquette & Coal Company covenants and agrees with the said Corporation, that whenever it will have inquiries for briquettes in the territory adjacent to the plant at Newark, N. J., of the Burnrite Coal Briquette Company, known as the Corporation, and that such inquiries are on a railroad where the Corporation will not be able to handle from a freight rate standpoint, the Burnrite Briquette & Coal Company will ship such briquettes in carload

lots through the Corporation at Newark, N. J., charging them for same the regular lowest whoesale price as charged to others in its territory.

The Burnrite Briquette & Coal Company further covenants and agrees with the said Corporation, that as soon as the Burnrite Briquette & Coal Company is completely organized, as soon as it is suitably engraved, the Corporation will be entitled to receive one hundred thousand (100,000) shares of its capital of one million shares of no par value, of the common stock, fully paid and non-assessable, of the said Burnrite Briquette & Coal Company.

That the said Corporation will at all times during the life of this Agreement, assist and co-operate with the organization to be informed in the proper use and application of the said process and binder.

IT IS, HOWEVER, expressly understood and agreed that in the event that any one plant for the manufacture of briquettes shall be abandoned for a period of twelve (12) months and that in the event that it shall cease to operate its plant indefinitely for more than twelve (12) months in any period, the right or license granted herein shall cease and determine and revert back to the corporation.

IT IS FURTHER expressly understood and agreed that this Agreement is subject to an agreement between the Corporation and F. M. Crossman, wherein among other things, the said F. M. Crossman, his legal representatives and assigns is entitled to receive a royalty of 10 cents per ton on all briquettes sold by the Corporation.

*Affidavit of Maurice O. Magid*

BURNRITE COAL BRIQUETTE COMPANY.  
New Jersey Railroad Avenue,  
Alpine and Earl Streets,  
Newark, New Jersey.

Telephone Waverly 0800.

May 9, 1922.

Mr. F. M. Yorston,  
233 Harrison Ave., H. P.  
New Brunswick, N. J.

Dear Sir:

A Special Meeting of the Board of Directors of the Burnrite Coal Briquette Company will take place at the office of the Company, 543 New Jersey Railroad Avenue, on Thursday, the 11th of May, 1922, at 4:00 P. M. for the following purposes.

1st. To act on charges preferred against F. M. Yorston, and to act on his removal.

2nd. To act on and ratify the proposed contract between this Company and Jonathan P. Edwards.

3rd. To amend the By-laws to reduce the numbers of Directors to five.

Very truly yours,

BURNRITE COAL BRIQUETTE CO.,

F. M. CROSSMAN,  
*President.*

FMCLD

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AFFIDAVIT OF MAURICE O. MAGID.  
(Filed May 22, 1922.)

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CITY, COUNTY AND STATE OF NEW YORK, ss.:

I, MAURICE O. MAGID, being duly sworn, depose and say:

I am a practising physician with offices at No. 982 Whitlock Avenue, in the City and State of New York.



I reside at the same address and have been practising my profession in this city for upwards of fifteen years. I am a resident of the City and State of New York and have been such a resident for over twenty-five years, and I am not a resident of the State of New Jersey.

I am a stockholder in the defendant company, holding two thousand shares of the capital stock for which I paid the sum of three thousand (\$3000) dollars.

I have never received any dividends from the company, outside of an Interim Certificate, which I believe has since been recalled by the defendant.

I desire to join in the application for the continuance of the temporary receiver and approve of the receivership being made permanent.

MAURICE O. MAGID, M. D.

Sworn to before me this nineteenth day of May, 1922.

MAY SARNOFF,  
*Commissioner of Deeds,*  
*New York City.*

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AFFIDAVIT OF JOHN B. BUCHAN.  
(Filed May 22, 1922.)

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STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX,

JOHN B. BUCHAN, of full age, being duly sworn according to law, on his oath says:

I signed an affidavit in the Post Office Building, Newark, N. J., on May 17, 1922, in the above stated cause. I never signed any affidavit on that date in this matter in Hudson County.

On Thursday, May 11, 1922, when the receivers were appointed, I received instructions from Mr. A. L.

Kirby, one of the receivers, to finish whatever work was necessary and to keep in our employ the necessary help to finish it, and I suggested myself that the receivers need only retain in their employ after the repair work was finished, Mr. Munson, the foreman, and myself, because we had not the necessary material to do any further manufacturing or repair work with. We did keep in our employ sufficient men to finish the repair work on hand, which was repairing the roof of one of the buildings and a railroad track.

We had not been manufacturing since May 6, 1922, and we shut down at that time because we had no more dry binder.

I believe that the product we are now manufacturing is the best quality possible to manufacture with the quality of coal that we have, which coal is not the best that I could have to manufacture with, being too high in ash content.

Since the receivers have been in possession, we have received on Friday, May 19, 1922, one car of starch, and until we had received this car it would have been impossible to manufacture.

During the time the receivers have been in possession they have been conducting the business in an economical manner and they have been selling the product whenever possible.

I have always been in their employ, and I am still in their employ as superintendent.

JOHN B. BUCHAN.

Subscribed and sworn to before me this twentieth day of May, 1922 A. D.

*Master in Chancery  
of New Jersey.*

AFFIDAVIT OF ALBERT B. DISS.

(Filed May 22, 1922.)

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

ALBERT B. DISS, of full age, being duly sworn according to law, on his oath says:

I reside in and am a citizen of the City of Newark, County of Essex and State of New Jersey.

I am retired from active business.

I was interested in the Burnrite Coal Briquette Company by its president, Mr. F. M. Crossman, about a year and a half ago, at which time I purchased \$2300 worth of stock at par, consisting of preferred and common stock, all of which stock I still hold.

Within four or five months after I bought this stock I was elected a director of this company, as I was directed to come to the plant by Mr. Crossman and he was the one who I always understood was instrumental in placing me on the board of directors. Very soon thereafter, I was elected vice-president of the concern, which office I still hold. I really had no duties as vice-president and received no compensation in that office, nor did I receive any compensation as a director. The only thing I really did as vice-president or as a member of the board of directors, was to attend the directors' meeting and call at the plant at different times, nothing definite, simply for the purpose of seeing if they were running and advising them of certain complaints that I had heard of and personally had experienced in using their briquettes. In fact, what I really did was to try and keep them encouraged. They appeared to be discouraged. The plant during that time that I have been vice-president and director did not operate continually but it would run intermittently. From my experience and observation as an of

ficer and director and stockholder, the plant was never profitably operated.

There was a certain amount of dissension among the board of directors, and Mr. George M. Rubinow, who was a member of the board of directors, was one of the most persistent in his complaints of Mr. Crossman's not carrying out things that he, Mr. Crossman, promised to do.

As a stockholder and officer of this company, I herewith join in the application of the complainant in the above stated cause to not only continue the present receivers, but to make them permanent because I believe, under the existing conditions of this corporation, it is best for its creditors and stockholders.

ALBERT B. DISS.

Subscribed and sworn to before me this twentieth day of May, 1922, A. D.

*Master in Chancery  
of New Jersey.*

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AFFIDAVIT OF GUIDO MONTICELLO.  
(Filed May 22, 1922.)

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STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX,

GUIDO MONTICELLO, of full age, being duly sworn according to law, on his oath deposes and says:

I hold and own 200 shares of common stock of the defendant company.

I am the chairman of a committee formed at a meeting of approximately 150 stockholders at Elizabeth, New Jersey. This meeting was held Tuesday, May 16, 1922. The stockholders' protective committee, of which I am chairman, represents approximately 150

stockholders who are the owners and holders of approximately 44,250 shares of stock, common stock, all of which stock I am informed they paid cash for.

These stockholders are all of the working class and the moneys invested by them was their hard-earned money.

This meeting directed this committee to represent the stockholders and I join in the present action for the purpose of making the receivers permanent.

The stockholders demand an investigation of the affairs of the company in order that they may know the exact status of same.

G. MONTICELLO.

Subscribed and sworn to before me this nineteenth day of May, 1922.

JOSEPH L. SMITH,  
*Master in Chancery  
of New Jersey.*

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AFFIDAVIT OF ALFRED STAHL.

(Filed May 22, 1922.)

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STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

ALFRED STAHL, of full age, being duly sworn according to law, on his oath deposes and says:

I am a resident and citizen of the City of Newark, County of Essex and State of New Jersey, and am a practising physician of this State.

I am the owner of 300 shares of the common stock of the Burnrite Coal Briquette Company. During the time that I have been the owner of this stock, I have never been able to secure any satisfactory information from the officers of this corporation, as to its financial condition. The answers I always received were

evasive. In fact at one time a stock salesman called to see me after I had purchased the above stock and said to me that if I didn't buy more, what I already bought would be worthless.

I attended a meeting of the stockholders held in Newark, New Jersey, in April, 1922, and that meeting was evidently called for the purpose of selling to the stockholders certain bonds of the defendant company. Mr. Crossman, the president of the company, at that meeting stated that we needed the money from the sale of these bonds for our current expenses, and that they were greatly indebted. He failed to tell us how much exactly, but he stated that they did not have the cash money to pay the current expenses and needed it also to meet a number of notes.

As a stockholder, I join in the application to continue the present receivers, and ask that they be made permanent, as I believe it is the best thing to do for the stockholders, conserving whatever interest may be left of this defendant company.

ALFRED STAHL.

Subscribed and sworn to before me this nineteenth day of May, 1922.

WALTER D. BARKER,  
*Master in Chancery*  
*of New Jersey.*

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AFFIDAVIT OF FRED'K C. BUCHHOLTZ.  
(Filed May 22, 1922.)

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX,

FRED'K C. BUCHHOLTZ, of full age, being duly sworn according to law, on his oath deposes and says:

I am a resident and citizen of the City of Newark, County of Essex and State of New Jersey.

I am a chemical engineer, a graduate of Brooklyn Polytechnic Institute.

I was employed July, 1919, by the Burnrite Coal Briquette Company as chemical engineer and I was in their employ until May, 1921. My general duties as chemical engineer were to analyze the coal, making of laboratory tests of coal, binder and materials used in the process of making Burnrite Briquettes.

In reference to the formula known as the Crossman binder formula, there is nothing secret about that formula to the best of my knowledge and belief. In fact binder formulas are found on file in the Bureau of Mines, Department of Interior, Washington, D. C.

The machinery and equipment of the defendant company was installed by the Mashek Engineering Company and there is nothing secretive about that machinery.

I represent 1000 shares of stock for which was paid \$1.50 per share; some of this stock is in the name of my wife and some of it in the name of my mother and relatives.

In reference to chemistry and engineering in general, I do not believe that Mr. Crossman can claim title to possessing a thorough knowledge as a chemist or engineer.

I believe that if the plant were given a fair trial under different management, it will prove to be a successful operation, but not under the absent management, as heretofore.

FRED'K C. BUCHHOLTZ.

Subscribed and sworn to before me this nineteenth day of May, 1922 A. D.

WALTER D. BARKER,  
*Master in Chancery  
of New Jersey.*

ORDER.  
(Filed May 29, 1922.)

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This matter coming on to be heard in the presence of Merritt Lane, Esq., and Joseph L. Smith, Esq., solicitors for and of counsel with the complainant, and Gross & Gross, Esqrs., solicitors for and of counsel with the defendant, on order to show cause heretofore made in the above-stated cause on May 11, 1922.

It is on this twenty-ninth day of May, 1922, ORDERED, ADJUDGED AND DECREED that the hearing upon the said order to show cause be and the same is hereby continued until Monday, June 5, 1922, at 10.30 o'clock (daylight saving time) in the forenoon of that day, at the Post Office Building, in the city of Newark.

CHARLES F. LYNCH.

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ORDER.  
(Filed May 29, 1922.)

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This matter coming on to be heard in the presence of Isaac Gross, of Gross & Gross, Esqrs., solicitors for and of counsel with the defendant, and Merritt Lane, Esq., and Joseph L. Smith, Esq., solicitors for and of counsel with the complainants, upon an order to show cause heretofore made in the above-stated cause on May 18, 1922.

It is on this twenty-ninth day of May, 1922, ORDERED, ADJUDGED AND DECREED that the hearing upon the said order to show cause be and the same is hereby continued until Monday, June 5, 1922, at 10.30 o'clock (daylight saving time) in the forenoon of that day, at the Post Office Building, in the city of Newark, and

It is further ORDERED that the said receivers may



continue the examination of the said defendant company's books, papers and accounts, and that the said receivers may sell such briquettes as they receive orders for.

J. L. BODINE.

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ANSWER.

(Filed June 5, 1922.)

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The answer of Burnrite Coal Briquette Company, a corporation of the State of Delaware, the defendant in the above-entitled cause, to the bill of complaint, respectfully shows as follows:

1. It has no knowledge as to the residence or citizenship of the complainant, and, therefore, leaves him to make proof thereof.

2. It admits the allegations of paragraph second of the bill.

3. It admits that the matter in controversy in this cause, exclusive of costs, exceeds the sum of \$3000, but it denies that this court has any jurisdiction, because neither the complainant nor the defendant is a citizen or resident of the State of New Jersey.

4. It admits the allegations of paragraph fourth of the bill.

5. It did not commence business, except in an experimental way, until the latter part of the year 1921. It admits all of the other allegations of paragraph fifth of the bill except that only 212,402 shares of preferred stock have been issued and are outstanding at the pres-

ent time. Twenty-five thousand of these shares have been pledged as security and not sold.

6. It denies each and every allegation of paragraph sixth of the bill except that it admits that it is the owner of certain formulæ and processes used in the manufacture of anthracite coal briquettes, and although the same are carried on the books of the company at a valuation of approximately \$602,150, they are of still greater value. Its buildings, land and equipment cost approximately \$547,000, but, as the said buildings were erected and the said equipment installed during the time when prices for labor and material were exceedingly high, the said land, buildings and equipment are not, in all probability, of that value at the present time, but are conservatively of the value of at least \$300,000. It has on hand raw material and finished products of the value of approximately \$15,000.

7. It admits the allegations of paragraph seventh of the bill except that the land therein mentioned was not acquired until after the incorporation of the defendant company, and except that the value of the said land is now in excess of \$40,000. An answer has been filed to the foreclosure bill mentioned in said paragraph.

8. It has no knowledge of the allegations set forth in paragraph eighth of the bill and leaves the complainant to make proof thereof. It, however, denies that the complainant purchased any of the shares of stock, of which he may now be the owner and holder, directly from this defendant.

9. It denies the allegations set forth in paragraph ninth of the bill and avers the fact to be, that its total

indebtedness, secured and unsecured, is \$58,788.02, of which sum \$11,797.34 is unsecured. The said latter indebtedness is composed of a number of very small items, which would have been paid in the ordinary course had it not been for the appointment of a receiver in this cause. None of the secured or unsecured creditors are pressing for the payment of their claims.

10. It denies the allegations of fact contained in paragraph tenth of the bill, but is advised that it is not required to make answer to the conclusions of law and fact therein set forth. It has, as is the case with nearly all business concerns, at times been compelled to borrow money when its bills receivable have not been paid as promptly as they should have been, but it has never had any difficulty in borrowing such money. Its current bills receivable have always been, since the company began really manufacturing, larger than its current bills payable.

11. It denies the allegations of paragraph eleventh of the bill.

12. It denies the allegations of paragraph twelfth, except it admits that the annual meeting was not called for the first Monday in May, 1922, but alleges the fact to be that this was due to a failure of the secretary of the company to perform his duties and to obey the instructions of the president. On account of the failure of the said secretary in the above respect and for other causes, he was removed as manager of the plant about a week before the institution of this suit, and he was cited to appear before a meeting of the board of directors, in order that he might be removed as secretary, on the very day that this bill was filed and receivers appointed herein. The meeting will be called and held

if and as soon as the application for a receiver has been disposed of.

13. The industry of manufacturing anthracite coal briquettes reached a stage of perfection in Europe several years ago, where they sold and sell for more per ton than the raw coal, but in this country, has been, until very recently in the experimental stage, and there are only a few plants in the United States engaged in this industry. Since the erection of this defendant's plant (which cost a large sum of money and which was not finally completed until the middle of the year 1921), it has been experimenting in the manufacture of anthracite coal briquettes, and it was not until March, 1922, that the plant and machinery were brought to the point of perfection where defendant's secret formulae and processes could be commercially and profitably utilized. The defendant's president has entered into a contract with a mining company for the supply of coal for a number of years to come, which contract he proposes to turn over to the defendant company, and which, if accepted by it, will enable it to manufacture briquettes and sell the same below the cost of raw coal and still realize a very substantial profit, and at all times to compete in the market with other concerns manufacturing anthracite coal briquettes.

14. Any moneys which the defendant is claimed to have lost since it began operations can properly be charged as a capital expenditure and said alleged loss has been due to the fact that it was only beginning operations, that its plant and machinery had not been brought to the point of perfection required to manufacture commercially under the formulae and processes which the defendant had acquired, and because the

whole enterprise was, for those reasons, going through the experimental and formative stage.

15. Owing to the strike of the coal miners throughout the United States, which has been in progress since April 1st and which will, in all probability, continue for at least two months more, the demand for briquettes during the coming year will be very great. As the company is now in a position to properly and economically manufacture the same, its prospects of large financial returns in the future are excellent. It has already received assurances from many coal dealers in and about Newark that they will take all of the product which this defendant can manufacture during the ensuing year. It has received further assurances of such financial support as may be necessary to conduct its manufacturing operations until it can market its product. On the other hand, in the event of a receivership, this financial support cannot be had, and, consequently, the receivership must result in liquidation, which would entail, of necessity, a sacrifice of the defendant's property and the complete ruination of a business which has bright prospects, and in the development of which large moneys have been expended.

WHEREFORE, this defendant prays that the said bill of complaint may be dismissed with costs.

GROSS & GROSS,  
*Solicitors for Defendant.*

THOMAS G. HAIGHT,  
*Of Counsel with Defendant.*

**AFFIDAVIT OF SERVICE.**  
(Filed June 6, 1922.)

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX, }

JAMES I. BOWERS, of full age, being duly sworn according to law on his oath says: I am a practicing attorney at law of the State of New Jersey, associated in practice with Joseph L. Smith, counsellor at law, 763 Broad Street, Newark, New Jersey.

On Thursday, May 11, 1922, at 3.55 P. M. (day-light saving time) I served a certified copy of the bill and order in this matter on F. M. Crossman, Esq., president of the corporation, personally.

JAMES I. BOWERS.

Subscribed and sworn to before me this fifteenth day of May, 1922 A. D.

*Master in Chancery  
of New Jersey.*

**AFFIDAVIT OF A. L. KIRBY AND JOHN P. DUFFY.**  
(Filed June 6, 1922.)

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX, }

A. L. Kirby and John P. Duffy, of full age, being duly sworn according to law, on their respective oaths depose and say:

Since the hearing on the return of the order to show cause, held at Trenton, on Monday, May 22, 1922, we have continued the examination of the defendant company's books through our accountants, Puder and

Puder, and respectfully refer to their report submitted herewith.

We have sold, since the date of our appointment as temporary receivers, May 11, 1922, 124 tons, 1600 pounds briquettes, for which we have received cash, with the exception of eighty-five tons which represent two carloads sold to George Weller, Newburgh, New York, under agreement that payment will be made upon arrival of cars. All of this material was sold at prices established by the company prior to our appointment.

We have collected fourteen outstanding accounts in full totaling \$553.08. We have been paid the sum of \$529.68, in part payment of four accounts. The accounts for which we have not been paid in full are disputed. We solicited payment of every account, forty-nine in number, found to be due on the books of the company at the date of our appointment. All accounts remaining uncollected to date are in dispute as the majority of same are due from officers and employees of the defendant company or from companies in which such persons are interested.

We have disbursed since the date of our appointment, approximately \$515.99 for payrolls covering the payment of wages of employees heretofore in the employ of the defendant company, and retained by us, and \$20 for trucking to deliver briquettes sold.

We have cash on hand today amounting to \$1515.04 and on the date of our appointment, the balance shown by the defendant company's check book was \$138.75.

We received a check from the treasurer of the defendant company, H. C. Rodemann, tendered in payment of his account which we respectfully refer to, but have not accepted because the said Mr. Rodemann has made certain deductions from his account due on an alleged agreement as to the deduction he could

make from purchases of briquettes made by him when he subscribed for certain stock of the defendant company. The said Mr. Rodemann also deducted the amount due to the accountants of the said defendant company which he, the said Mr. Rodemann, paid or guaranteed. This check tendered by Mr. Rodemann of course has not been included in the amount of balance on hand because, as above stated, we did not accept same.

A. L. KIRBY,

JOHN P. DUFFY.

Subscribed and sworn to before me this twenty-sixth day of May, 1922 A. D.

C. HELEN HENNESEY,  
*A Commissioner of Deeds*  
*for New Jersey.*

Service acknowledged May 26, 1922, 5 P. M.

GROSS & GROSS,  
*Solicitors of Defendant.*

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AFFIDAVIT OF FRANCIS M. YORSTON.  
(Filed June 6, 1922.)

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STATE OF NEW JERSEY, } ss.:  
COUNTY OF ESSEX.

Francis M. Yorston, of full age, being duly sworn according to law, on his oath deposes and says:

I have already made several affidavits in this matter.

The capital stock of the Burnrite Coal Briquette Company was originally issued under resolution of the board of directors of the Burnrite Coal Briquette Company to the Burnrite Coal Briquetting Company, a corporation of Delaware, in consideration of the



transfer by the Burnrite Coal Briquetting Company of Delaware, to the Burnrite Coal Briquette Company of all of its assets. There was returned to the treasury of the Burnrite Coal Briquette Company 600,000 shares of the common stock and 297,850 shares of the preferred stock, and it is this stock that has been sold upon the market at various prices to stockholders, thus leaving the Burnrite Coal Briquetting Company with 600,000 shares of the common stock and 2150 shares of the preferred stock of the Burnrite Coal Briquette Company. The only asset of the Burnrite Coal Briquetting Company transferred to the Burnrite Coal Briquette Company was the formula which I have referred to as the Crossman formula. I am informed that most of the stock issued to the Burnrite Coal Briquetting Company went to Mr. Crossman and that it is that stock which he now holds. There was also transferred to him 10,000 shares of the common stock of the Burnrite Coal Briquette Company for alleged services rendered.

Originally the Burnrite Coal Briquette Company attempted to sell its own stock. Subsequently, however, there was formed the Burnrite Coal Securities Corporation, of which I am informed and believe, Mr. Crossman was an officer and stockholder. The form that the transaction took was the sale of the stock of the Burnrite Coal Briquette Company to the Burnrite Coal Securities Company at various prices at different times, they acting as fiscal agents, and they sold the stock in turn to sub-brokers and the public, and what price the Burnrite Coal Securities Company got for their stock, I do not know. I know, however, that some of the stock was retailed by the Burnrite Coal Securities Company at as high as \$3 per share, the par value of which was \$1, and for which the Burnrite Coal Briquette Company got no more than par, most of it being charged to the Burnrite Securities Company at seventy cents or eighty cents.

I do not know what the exact interest of Mr. Crossman is in the Burnrite Coal Securities Company, but I believe that he has an interest therein.

The office of the company is at 141 West Thirty-sixth Street, New York City.

The Shamokin Valley Coal Sales Corporation, is a corporation having its office at Mr. Crossman's office in New York City.

The Burnrite Coal Securities Company also furnished coal to the Burnrite Coal Briquette Company, and the name of the concern was changed about the first of March, to the Burnrite Coal Service Company and thereafter the Burnrite Coal Briquette Company obtained coal from the Burnrite Coal Service Corporation, and finally, on or about the month of March, the account was transferred by the Burnrite Coal Service Corporation to the Shamokin Valley Coal Sales Corporation, of which Mr. Crossman is the New York representative.

A bill for coal came in to me on March 31, 1922, from the Burnrite Coal Service Corporation and subsequent to its receipt, I was instructed by Mr. Crossman, to destroy the bill and transfer the account to the Shamokin Valley Coal Sales Corporation, for which a new bill was rendered. I did not destroy the bill; it is annexed hereto.

I was informed that the Burnrite Coal Service Corporation was not paying more than forty cents or fifty cents for coal which it was billing us at seventy-five cents and I had endeavored to find out what the actual profit was for the Burnrite Coal Service Corporation but was never successful.

Except for the first four months, the company has been operating at a loss, and the proceeds of stock sales and borrowed money have been used to pay operating expenses. It was realized that this could not continue, and an attempt was made to float a bond

issue, which attempt was unsuccessful, and by the first of May it was realized that it was unsuccessful and that money could not be raised in that way. Instead of being used to obtain new money, the bonds were used to secure creditors, among others, the Burnrite Coal Service Corporation, to the extent of \$20,000, Mr. Crossman, to the extent of \$28,600, thus preferring these creditors.

The briquettes manufactured with the binder of the so-called Crossman formula, were unsatisfactory, because among other things, the sulphur gases produced had the effect of causing excessive wear upon the plant and being unsatisfactory to the trade, when used. The result was that for two months prior to the closing of the plant by the receivers, the Crossman formula had not been used, but instead a formula which was devised by Mr. Buchan, was used which had the effect of eliminating to some extent, the evils of the Crossman binder.

The interim certificates of the Burnrite Coal Briquette Company of New Jersey, to upwards of a million five hundred thousand dollars represent the transaction by which the Burnrite Coal Briquette Company gave to the Burnrite Coal Briquette Company of New Jersey, the right to the use of the formula in its plant in Perth Amboy. The Burnrite Coal Briquette Company of New Jersey has no property. It owes the Burnrite Coal Briquette Company \$320. The Burnrite Coal Briquette Company got half of the stock of the Burnrite Coal Briquette Company of New Jersey for its contract, but that stock is worthless. Notwithstanding its worthlessness, the Burnrite Coal Briquette Company has sold some of it for the purpose of raising money to pay a dividend upon the preferred stock of the Burnrite Coal Briquette Company, and some moneys raised in this way have been distributed to stockholders in the Burnrite Coal Briquette Company

as dividends, although the dividends were not earned. Other preferred stockholders have not received their dividends.

At the meeting of April 19, 1922, of the board of directors, the plan of giving away all of the rights of the company to manufacture in the most populous territory to the Burnrite Coal and Briquette Sales Company, a common law trust, was brought forward. Who this common law trust is, I do not know, but I believe that it is Mr. Crossman and some of his associates, as when the special meeting of the board of directors was called for May 11, 1922, the notice read "for the confirmation and ratification of the contract with Jonathan P. Edwards," and he is one of the associates of Mr. Crossman in the Shamokin Valley Coal Sales Corporation.

It was at this point that I could see that matters were speedily going from bad to worse, and that there were no prospects and no money for the continuation of the company's business.

FRANCIS M. YORSTON.

Subscribed and sworn to before me this fifth day of June, 1922.

C. HELEN HENNESEY,  
*A Commissioner of Deeds  
for New Jersey.*

AFFIDAVIT OF CHARLES G. DENO.

(Filed June 6, 1922.)

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

CHARLES G. DENO, of full age, being duly sworn according to law, on his oath deposes and says:

I am an accountant and connected with the firm of Puder & Puder.

I have caused a report and account to be made to the receivers of the Burnrite Coal Briquette Company under date of May 20, 1922, and under date of May 26, 1922, and the matters and things set forth in these reports and accounts are correct.

Particularly have I examined the books and prepared a statement of income and profit and loss for the period of January 1, 1922 to May 11, 1922, with the result that the net loss for that period is shown at \$14,261.84, and this is without considering depreciation, but is merely based upon operations. I have also prepared another report containing abstracts of the minutes and further information under date of June 3d. The statements therein contained are true. The books are in such a condition, and are so voluminous, and the affairs, so far as stock matters are concerned, are so complicated, that it has been impossible for me to get the information which I submitted in my report of June 3, until that time, and even then, the report is but a partial report, and it will take considerably more time to prepare a complete analysis of the company's affairs, both financial and stock.

CHARLES G. DENO.

Subscribed and sworn to before me this fifth day of June, 1922.

*Master in Chancery  
of New Jersey.*

AFFIDAVIT OF ARCHIBALD F. SLINGERLAND.  
(Filed June 12, 1922.)

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX,

Archibald F. Slingerland, being duly sworn according to law, upon his oath deposes and says that he is a counsellor-at-law of the State of New Jersey and is duly admitted to practice in the United States District Court for the District of New Jersey; that he is attorney for Charles F. Nesler and David L. Nesler, executors of Charles L. Nesler, deceased, who hold a mortgage covering a part of the premises owned by the defendant above named, situate on the northeast corner of Earl Street and New Jersey Railroad Avenue in the City of Newark, Essex County, New Jersey.

Deponent further says that he has read the affidavit of Francis M. Crossman filed in the above entitled matter and particularly that part of the affidavit referring to the foreclosure of the mortgage held by deponent's client; and deponent says that that part of the affidavit which states that an agreement was entered into between the defendant above named and deponent's client extending the time of payment of the said mortgage is absolutely untrue. Deponent says that all negotiations and communications between the said defendant and the said executors were had with this deponent and that this deponent never agreed with the said defendant to extend the time of payment of said mortgage for any definite period. The facts respecting the transaction are as follows:

At or about the time that the said mortgage became due, which was on September 1, 1921, the defendant requested an extension of one year in which to pay the said mortgage, but this request was not

granted. Deponent, who had entire charge of the matter for said executors with the right to use his discretion concerning the demand of payment, permitted the mortgage to run along until February 18, 1922, when he wrote the defendant a letter advising it that the said executors desired to have the said mortgage paid off on March 1, 1922, and asking it to make arrangements therefor accordingly. In reply to this letter the defendant wrote deponent a letter, under date of February 21, 1921, acknowledging receipt of deponent's letter and stating that the matter had been referred to its president. Thereafter deponent had several conversations with defendant's secretary, Mr. Yorston, both over the telephone and at deponent's office, at which times Mr. Yorston requested the withholding of the institution of foreclosure proceedings until the defendant could place itself in funds, which it was anticipated would be received from a bond issue then being arranged for. Deponent stated to said Yorston that he did not wish to be unreasonable about the matter and would withhold filing the bill to foreclose the mortgage a short time to give the defendant an opportunity to obtain funds with which to pay off the mortgage; but he expressly stated to said Yorston that he could not allow the matter to remain unadjusted indefinitely. Deponent waited until the latter part of March, 1922, during which time he had conversations with said Yorston in which the said Yorston made numerous promises to make payment, none of which promises were kept. Finally, deponent notified the defendant that unless the mortgage was paid by April 1st, suit to foreclose the mortgage would be instituted. Payment not being made, deponent filed a bill to foreclose the said mortgage on or about April 4, 1922. On the last day for filing an answer in said foreclosure suit, the defendant filed an answer setting up

the alleged extension agreement. This was the first intimation deponent ever had that the defendant was claiming that the time in which to pay the mortgage had been extended by agreement, the same never having been mentioned in any conversations had with deponent and the defendant or its officers. Deponent believes that the defense alleged in the answer was interposed only for the purpose of delay and states that there is absolutely no foundation for making any such defense.

ARCHIBALD F. SLINGERLAND.

Subscribed and sworn to before me this sixth day of June, A. D. 1922.

JAMES I. DOWNS,  
*Attorney-at-Law,*  
*of the State of New Jersey.*

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AFFIDAVIT OF DR. ALFRED STAHL.  
(Filed June 12, 1922.)

STATE OF NEW JERSEY, } ss.:  
COUNTY OF ESSEX, }

DR. ALFRED STAHL, being duly sworn according to law, on his oath says:

I have heretofore made an affidavit in the above stated cause and reaffirm that I am a stockholder of the Burnrite Coal Briquette Company, and as such attended a meeting of stockholders called by the Burnrite Coal Stockholders' Protective Association. This meeting was held on Friday, June 9, 1922, at Newark, N. J. I was elected secretary of the organization formed at this meeting, known as the Stockholders' Protective Association of Newark.



At the meeting a motion was made, seconded and carried, that the desire of this association was that the receivers be continued and that they be made permanent.

There were circulated at the meeting, copies of the *Paterson Evening News* of Paterson, N. J., of Friday, June 9, 1922. I respectfully refer to the article contained therein and made a part hereof, as if fully set forth herein.

At the meeting the treasurer of our company, Mr. H. C. Rodemann, stated that there was an operating loss for the year 1921 of approximately \$42,000, and that there was an operating loss from January 1, 1922, to May 11, 1922, of approximately \$7000.

ALFRED STAHL.

Subscribed and sworn to before me this tenth day of June, 1922.

*Master in Chancery  
of New Jersey.*

**THE PATERSON EVENING NEWS.****Paterson, N. J., Friday, June 9, 1922.**

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**SAYS BURNRITE COAL COMPANY IS SOLVENT.**

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**CROSSMAN'S STATEMENT.**

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*President of Company Declares "Spite Work" is Behind Application for Receivership—Holds Company Can Still Make Money. By Producing Its Product.*

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Francis M. Crossman, president of the Burnrite Coal Briquette Company, of Newark, in a statement issued today, took exception to the stories circulated for the past few weeks that the company is insolvent. He declared that the application for a receivership was made as a result of what he calls "spite work." Mr. Crossman added that this is the work of a former employee who was discharged because it is alleged that he was conspiring to sell some of the secrets of the company and enticing away an engineer in the company's employ. Mr. Crossman also declared that the Burnrite Company, while temporarily in the hands of a receiver and while the stockholders are being scared in an effort to collect a fee for a protective committee, will eventually be declared solvent, and will go on successfully to produce its product.

The stockholders need have no fear of losing their investment. Mr. Crossman declared: "The various stories that have been going the rounds of money received and squandered are untrue, as the books of the company show, and which have been thoroughly examined by certified public accountants employed by the temporary receivers."

Mr. Crossman's statement is as follows:

"The only means the stockholders have to protect their investment is the discharge of the receivers. If the receivership continues it must mean total loss to them. This must be very obvious to every one that knows anything about receiverships."

There are 1500 stockholders in this vicinity who are affected by the litigation. The application still pending before Federal Judge Charles F. Lynch was made by Edward C. Riggs, of Brooklyn, one of the stockholders, who claims that the company is insolvent and is not being managed properly.

#### MR. CROSSMAN'S STATEMENT.

"Stories have been appearing recently in the papers to the effect that the Burnrite Company has squandered millions of dollars and that I have received over \$600,000 for formulas and processes, which, as a matter of fact, are not true. The fact is that for nearly twelve years I have spent my time and money as well as my energy in trying to develop this industry. I have spent thousands of dollars.

"In 1917 I incorporated a small company known as the Burnrite Briquetting Company, of Delaware, with a capitalization of \$150,000 preferred, and \$350,000 in common stock. I owned this company entirely with a few of my associates. We placed this capitalization into the treasury for corporate purposes, \$175,000 of the common and \$150,000 of the preferred, intending to sell the preferred if additional money was needed and give away an additional share of common with each share of preferred. But when we were ready to contract for the building, the machinery and equipment, we found that they would cost nearly \$200,000,

and finding that it was necessary to have at least \$200,000 in the treasury for working capital, the B. C. B. Company was re-incorporated for one million, two hundred thousand common and three hundred thousand preferred shares, all of the par value of one dollar.

"Under this new reorganization the old company received fifty per cent. of the common stock, which was six hundred thousand shares and six hundred thousand shares of the common as well as the three hundred thousand shares of the preferred were placed in the treasury. In order to raise money for the buildings, machinery, as well as working capital, the company sold to the coal dealers and their friends of Newark, Paterson and surrounding territory, the preferred stock at one dollar per share and gave one share of common as a bonus free, and as the buildings were being constructed. The company found that the money was not coming in fast enough to meet its obligations, I had to loan them considerable of my money at various times, for which I took preferred and common stock for the money at the same basis as was being sold to the public at the time that is, during 1918 and the beginning of 1919.

#### SOLD LARGE BLOCKS OF STOCK.

"These things are on record on the books of the company. As the company found itself unable to attend to the raising of finances through its own efforts, it made various negotiations with brokers through different parts of the country for the sale of its stock and ultimately succeeded in closing the contract with a fiscal agent who established himself as a security company, and paid the company for every share of stock that he contracted for. The price that the company received for the sale of its stock is a matter of record on the books of the company.

"This fiscal agent in turn sold large blocks of stock to other brokers at various prices as time advanced and the cost of doing business became higher, such as salesman commissions, publicity, etc., naturally the various brokers obtained a very much larger price for their sale of stock than the company received when it sold through its fiscal agent. The Burnrite Coal Briquette Company had nothing to do with these sales. And the terrible noise is being made that I have received such a tremendous amount of stock in the company, for years of hard labor and money that I have expended, and took a chance that the company became successful, I could only reap the benefits that would return to me from the earnings of the company in the form of dividends on the stock that I held which was the same class of stock that the company at its inception gave away as a bonus to the purchasers of preferred stock. So that it was up to me to make this stock valuable and that is what I have at all times endeavored to do.

"Every transaction that ever transpired was always approved by the board of directors which have been elected by the stockholders. I have never in three years that stock was being sold to the public exercised my voting right to elect directors; the stockholders always elected their directors. As a matter of fact, at the last annual meeting of the stockholders, a directorate was elected mostly of local people (Newark) and a vote of thanks as well as confidence was given to me, as well as the former board of directors.

"The company met many difficulties, owing to the fact that most of its machinery was bought during war-time periods, so that it did not function properly, and tremendous amounts of money were expended to make the plant economic and efficient and to produce the product that it was originally intended to manufacture.

"This has now been brought about and while it has exhausted most of its treasury funds, the company is in a position to go right ahead and sell all the product that it can make, at a satisfactory profit for the ensuing year. Practically all the coal dealers in Paterson, Passaic, as well as Newark and the vicinity, are not in favor of this precipitate action that was brought against the company, and all are in favor to have the present management continue and I wish to warn the stockholders not to be intimidated or fooled by unscrupulous people who try to collect from them for purposes that do not benefit the stockholders."

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**AFFIDAVIT OF FRANCIS M. YORSTON.**  
(Filed June 12, 1922.)

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STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

FRANCIS M. YORSTON, of full age, being duly sworn according to law, on his oath says:

I have read the affidavit of Francis M. Crossman heretofore filed in the above stated cause, sworn to under date of June 3, 1922, in so far as the same relates to my affidavit heretofore filed on May 20, 1922.

I received 1000 shares of common stock of this company, which I still hold, the entire 1000 shares. This stock was given to me as, I believed, a Christmas present, on or about Christmas, 1920, at which time all the employees of the plant received treasury stock as a Christmas present.

In reference to the allegation that I plotted with anyone against the defendant company, or for the purpose of controlling formula, the facts are as follows:

After the authorization of the \$100,000 bond issue, Mr. Dwight G. Johnson, of Philadelphia, with whom a contract was made for the sale of these bonds, and the subsequent meeting of stockholders held on the eleventh day of April, 1922, in the city of Newark, and after Mr. Crossman had talked for two and a half hours to the stockholders, disagreeing and arguing with every one who attempted to ask a question regarding the affairs of the business, and at the railway station that night following the meeting, told me that he was through with Mr. Crossman and would have nothing to do with the sale of these bonds, and as this was the one last effort we had depended upon for the raising of funds with which to carry on this business, Mr. Crossman having time and time again stated that he would not give another cent toward the running expenses, and I having had put personal money in with which to meet weekly pay rolls, and having gone without my salary for as much as five weeks at a time, and the company then and now still owing me money for back salary, could readily see that the continuance of the business was only a matter of two weeks at the most with the available cash in sight.

It was at this period, and largely at the suggestion of Mr. Buchan that he and I entered into an agreement with reference to the formula that we had developed, using as I understand it, some of the ingredients he had formerly used in his own briquetting plant, prior to his engagement with this company, and for the protection of my future livelihood, should this plant become inoperative.

Following the meeting of the stockholders, referred to above, Mr. Johnson came to me and suggested, after finding out that I knew how to make briquettes and after stating that he was through with selling bonds for the Burnrite Coal Briquette Com-

pany, that if they build a briquette factory at Pennsylvania, in connection with their coal operation, would I consider becoming associated with him and I said that if he was not going to handle the sale of the bonds, I did not see where the company was going to get funds from, as we had all agreed<sup>1</sup> that the bond issue was our last hope, and that with ~~out~~ <sup>out</sup> funds, I could not see how the company could possibly continue for more than two weeks, as Mr. Crossman had so often stated that he would not furnish the company with any more capital.

My reply to Mr. Johnson was that I had nothing to sell but my services, and if he and his associate desired a conference, I would be very glad to talk the matter over.

Some negotiations followed to the extent that Mr. Johnson personally visited me at my home apparently with a view to obtaining further information, but not for the purpose of the conference which I had suggested, and therefore, no negotiations have taken place. It appears, that Mr. Crossman, through Mr. Johnson's associate learned of his suggestion to me and asked me if I had negotiated with Mr. Johnson, whereupon I told him I had not, having in mind, if such could be considered negotiations, that it was Mr. Johnson who was endeavoring to negotiate with me.

As for the statement of Mr. Crossman that he had called to my attention the stockholders' meeting, my affidavit heretofore filed, clearly sets forth what the actual facts in this matter are.

In reference to Mr. Crossman's statement that the process and formula within the past two months, have been perfected, and that we were now making better briquettes, this was done without his knowledge and that the formula that was heretofore used by the company was changed at my suggestion, and with the



knowledge of Mr. Diss, the vice-president of this company who stated to me that I was perfectly justified in doing so, because it was necessary that we produce a better briquette than we had heretofore, and also agreed with me that it was not necessary to inform Mr. Crossman of this change, because we were afraid that if this matter was brought to his attention, he would have made further insistence that the briquettes be made under the formula of the company which had for so long a time been used unsuccessfully and to the disadvantage of the company's business.

I verily believe that the real estate under contract to be purchased from Mr. Crossman by the Burnrite Coal Briquette Company of New Jersey, is for \$100,000 and that the consideration paid for this property by Mr. Crossman and wife was \$68,500.

FRANCIS M. YORSTON.

Sworn and subscribed to before me this tenth day of June, 1922.

FRANKLIN M. WOLF,  
*Commissioner of Deeds,*  
*of New Jersey.*

## AFFIDAVIT OF LESLIE H. TYLER.

(Filed June 12, 1922.)

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK, } ss.:

LESLIE H. TYLER, of full age, being duly sworn,  
deposes and says:

I have carefully searched through the files of the *New York Times*, *New York Sun*, and *New York Tribune*, for the months of August, September and October, 1918, in the New York Public Library, and the following report of sales and prices of Burnrite Coal Briquette Company stock is an absolutely correct transcript of the reports as given in those newspapers. I am familiar with research work and understand the care necessary in making and transcribing such documents, and the accompanying report of sales and prices of the Burnrite Coal Briquette Company stock as taken from the newspapers mentioned is absolutely correct.

LESLIE H. TYLER.

Sworn to before me this tenth day of June, 1922.

FRANK E. HALL,  
(Seal)                      *Notary Public.*  
New York County No. 57,  
New York Registry No. 3050,  
Term expires March 30, 1923.

# Report of Sales and Prices

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REPORTED TRANSACTIONS IN BURNRITE COAL BRIQUETTE COMPANY STOCK, DURING AUGUST, SEPTEMBER AND OCTOBER, 1918, ON THE NEW YORK CURB

Date	N. Y. Times Report				N. Y. Sun Report				N. Y. Tribune Report			
1918	Sales	High	Low	Last	Sales	High	Low	Last	Sales	High	Low	Last

August

SUNDAY

SUNDAY

SUNDAY

SUNDAY

SUNDAY

SUNDAY

SUNDAY

SUNDAY

SUNDAY

## Report of Sales and Prices

Page 2 of report of transactions of Burnrite Coal Briquette Company stock, during August, September and October, 1918, on the New York Curb:

Date	N. Y. Times Report				N. Y. Sun Report				N. Y. Tribune Report			
1918	Sales	High	Low	Last	Sales	High	Low	Last	Sales	High	Low	Last
August												
24												
25	SUNDAY				SUNDAY				SUNDAY			
26	20,000	2	1 $\frac{3}{8}$	2	10,200	2	1 $\frac{3}{8}$	2	20,000	2	1 $\frac{3}{8}$	2
27	1,880	2	1 $\frac{15}{16}$	1 $\frac{15}{16}$	5,000	2 $\frac{1}{4}$	1 $\frac{15}{16}$	2 $\frac{3}{16}$	1,800	2	1 $\frac{15}{16}$	1 $\frac{15}{16}$
28	12,000	2 $\frac{1}{2}$	2 $\frac{1}{16}$	2 $\frac{1}{2}$	5,100	2 $\frac{1}{2}$	2 $\frac{1}{16}$	2 $\frac{1}{2}$	12,000	2 $\frac{1}{2}$	2 $\frac{1}{16}$	2 $\frac{1}{2}$
29	28,500	3 $\frac{1}{2}$	2 $\frac{7}{16}$	3 $\frac{1}{2}$	19,600	3 $\frac{1}{2}$	2 $\frac{7}{16}$	3 $\frac{7}{16}$	28,500	3 $\frac{1}{2}$	2 $\frac{7}{16}$	3 $\frac{1}{2}$
30	19,700	4 $\frac{1}{8}$	3 $\frac{7}{16}$	3 $\frac{3}{4}$	15,100	4 $\frac{1}{8}$	3 $\frac{7}{16}$	3 $\frac{3}{4}$	19,700	4 $\frac{1}{8}$	3 $\frac{7}{16}$	3 $\frac{3}{4}$
31	10,500	4 $\frac{5}{8}$	3 $\frac{7}{8}$	4 $\frac{5}{8}$	8,700	4 $\frac{5}{8}$	3 $\frac{7}{8}$	4 $\frac{5}{8}$	10,500	4 $\frac{5}{8}$	3 $\frac{7}{8}$	4 $\frac{5}{8}$
Sept.												
1	SUNDAY				SUNDAY				SUNDAY			
2	LABOR DAY				LABOR DAY				LABOR DAY			
3	22,000	5 $\frac{1}{2}$	4	4 $\frac{1}{4}$	10,300	5 $\frac{1}{2}$	4	4 $\frac{1}{4}$	22,000	5 $\frac{1}{8}$	4	4 $\frac{1}{4}$
4	2,450	4 $\frac{1}{2}$	4	4 $\frac{1}{8}$	850	4 $\frac{1}{2}$	4 $\frac{1}{8}$	4 $\frac{1}{4}$	2,450	4 $\frac{1}{2}$	4	4 $\frac{1}{8}$
5	3,500	4 $\frac{1}{2}$	3 $\frac{3}{4}$	3 $\frac{3}{4}$	4,000	4 $\frac{1}{2}$	3 $\frac{3}{4}$	4	3,500	4 $\frac{1}{2}$	3 $\frac{3}{4}$	3 $\frac{3}{4}$
6	3,425	4 $\frac{1}{2}$	3 $\frac{1}{2}$	3 $\frac{3}{4}$	2,300	4	3 $\frac{1}{2}$	3 $\frac{3}{4}$	3,425	4 $\frac{1}{2}$	3 $\frac{1}{2}$	3 $\frac{3}{4}$
7	1,700	4	3 $\frac{3}{4}$	3 $\frac{3}{4}$	500	4	3 $\frac{3}{4}$	4	1,700	4	3 $\frac{3}{4}$	4
8	SUNDAY				SUNDAY				SUNDAY			
9	400	3 $\frac{3}{4}$	3 $\frac{1}{2}$	3 $\frac{3}{4}$	400	3 $\frac{3}{4}$	3 $\frac{1}{2}$	3 $\frac{5}{8}$	400	3 $\frac{3}{4}$	3 $\frac{1}{2}$	3 $\frac{3}{4}$
10	900	4	3 $\frac{1}{2}$	4	800	4	3 $\frac{1}{2}$	4	900	4	3 $\frac{1}{2}$	4
11	500	3 $\frac{3}{4}$	3 $\frac{3}{4}$	3 $\frac{3}{4}$	200	3 $\frac{3}{4}$	3 $\frac{3}{4}$	3 $\frac{3}{4}$	500	3 $\frac{3}{4}$	3 $\frac{3}{4}$	3 $\frac{3}{4}$
12	HOLIDAY				HOLIDAY				HOLIDAY			
13	800	3 $\frac{3}{4}$	3 $\frac{1}{2}$	3 $\frac{3}{4}$					800	3 $\frac{3}{4}$	3 $\frac{1}{2}$	3 $\frac{3}{4}$
14	400	4	3 $\frac{3}{4}$	4	200	4	4	4	400	4	3 $\frac{3}{4}$	4
15	SUNDAY				SUNDAY				SUNDAY			
16	800	4	4	4	400	4	4	4	800	4	4	4
17	800	3 $\frac{7}{8}$	3 $\frac{1}{2}$	3 $\frac{1}{2}$	700	3 $\frac{7}{8}$	3 $\frac{1}{2}$	3 $\frac{1}{2}$	800	3 $\frac{7}{8}$	3 $\frac{1}{2}$	3 $\frac{1}{2}$
18	800	3 $\frac{3}{4}$	3 $\frac{1}{2}$	3 $\frac{1}{2}$	800	3 $\frac{3}{4}$	3 $\frac{1}{2}$	3 $\frac{1}{2}$	800	3 $\frac{3}{4}$	3 $\frac{1}{2}$	3 $\frac{1}{2}$
19	3,200	3 $\frac{1}{2}$	2 $\frac{5}{8}$	3 $\frac{1}{2}$	2,800	3 $\frac{1}{2}$	2 $\frac{1}{2}$	3 $\frac{1}{4}$	3,200	3 $\frac{1}{2}$	2 $\frac{5}{8}$	3 $\frac{1}{2}$
20	1,200	3 $\frac{3}{4}$	2 $\frac{1}{2}$	3	1,200	3 $\frac{3}{4}$	2 $\frac{5}{8}$	3 $\frac{1}{4}$	1,200	3 $\frac{3}{4}$	2 $\frac{1}{2}$	3
21	500	3	3	3	1,000	3	3	3	500	3	3	3
22	SUNDAY				SUNDAY				SUNDAY			
23	1,500	3 $\frac{1}{2}$	3	3 $\frac{1}{8}$					1,500	3 $\frac{1}{2}$	3	3 $\frac{1}{8}$

# Report of Sales and Prices

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N. Y. Times Report				N. Y. Sun. Report				N. Y. Tribune Report			
Sales	High	Low	Last	Sales	High	Low	Last	Sales	High	Low	Last
500	3½	3½	3½	500	3½	3½	3½	500	3½	3½	3½
1,000	3½	3¼	3¾					1,000	3½	3¼	3¾
600	3¾	3¼	3¾					600	3¾	3¼	3¾
600	3½	3¾	3½	500	3¾	3¾	3¾	600	3½	3¾	3½
900	3½	3¾	3½	800	3½	3¾	3½	900	3½	3¾	3½
SUNDAY				SUNDAY				SUNDAY			
500	3½	3½	3½	600	3½	3½	3½	500	3½	3½	3½
500	3½	3½	3½	600	3½	3½	3½	500	3½	3½	3½
500	3½	3½	3½	900	3½	3½	3½	500	3½	3½	3½
500	3¾	3¾	3¾	400	3¾	3¾	3¾	500	3¾	3¾	3¾
500	3¼	3¼	3¼					500	3¼	3¼	3¼
500	3¼	3¼	3¼					500	3¼	3¼	3¼
SUNDAY				SUNDAY				SUNDAY			
HOLIDAY SUNDAY				HOLIDAY SUNDAY				HOLIDAY SUNDAY			
SUNDAY				SUNDAY				SUNDAY			
SUNDAY				SUNDAY				SUNDAY			

### Report of Sales and Prices

Page 3 of report of transactions of Burnrite Coal Briquette Company stock, during August, September and October, 1918, on the New York Curb:

Date	N. Y. Times Report				N. Y. Sun Report				N. Y. Tribune Report			
	Sales	High	Low	Last	Sales	High	Low	Last	Sales	High	Low	Last
Oct.												
28	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
29	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
30	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
31	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000

**AFFIDAVIT OF CHARLES G. DENO.**

(Filed June 12, 1922.)

STATE OF NEW JERSEY, )  
COUNTY OF ESSEX, ) ss.:

CHARLES G. DENO, of full age, being duly sworn according to law, on his oath deposes and says:

I am connected with the accounting firm of Puder & Puder, and have been actually engaged in the examination of all the books and records in this proceeding.

I attach hereto and make a part hereof exact and true copies of the following:

1. Transcript of common stock issued to Francis M. Crossman, showing transfers of same.
2. Transfer of common stock from others to Francis M. Crossman.
3. Transfers of preferred stock issued to Francis M. Crossman to others.
4. Transfers of preferred stock from others to Francis M. Crossman.

**CHARLES G. DENO.**

Sworn and subscribed to before me this twelfth day of June, 1922 A. D.

*Master in Chancery  
of New Jersey.*

## AFFIDAVIT OF ALFRED L. KIRBY.

(Filed June 12, 1922.)

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

ALFRED L. KIRBY, being duly sworn according to law, on his oath deposes and says: I was appointed receiver, with Mr. J. P. Duffy, on May 11, 1922, and since that date have devoted my entire time to the management of the business and have personally made an exhaustive investigation of the affairs of the Burnrite Coal Briquette Company.

Prior to the year 1917, F. M. Crossman, the chief promoter of this enterprise, was engaged in various enterprises, such as the sale of silk, millinery, corsets, whiskey, perfume, all far removed from briquetting and fuel in general.

In 1917, the Burnrite Coal Briquetting Company was incorporated in the State of Delaware and had offices in the Bakewell Building, Pittsburgh, Pennsylvania, in which city and at which time Crossman was endeavoring to float and finance said Briquetting Company. Mr. F. M. Crossman owned and controlled this company, notwithstanding his positive statement in court, June 5, 1922, to wit, that he only owned 30 per cent. of its stock. In substantiation of this statement I submit letter bearing Crossman's own signature, dated October 17, 1918, addressed to Honorable J. Gordon Battle. I also submit a number of letters written by Crossman to Mashek Engineering Company, from which it is evident that Crossman was dependent almost entirely upon Mr. Mashek for information pertaining to the briquetting industry. It will also be noted from these letters that Crossman was using sample briquettes made in competitive plants in Har-



risburg and elsewhere in his promotion activities and he was negotiating almost from the very beginning with a Mr. Levensohn for the use of Levensohn's binder. I refer specifically to letter dated April 23, 1917, attached hereto, although almost every letter contains reference to this transaction. I also refer to letter attached hereto, dated May 8, 1917, showing Crossman's desire to use a formula then in use by Dr. Gamble. Mr. Crossman declares that he has spent practically his entire life and a substantial personal fortune in developing this briquetting process, and I quote from his own letter attached hereto, dated June 16, 1917, and addressed to Mashek Engineering Company: "Having gotten all of my people together who are ready and willing to subscribe all of the capital necessary for the erection of this contemplated plant, they, however, being from 'Missouri,' I will have to either produce or quit.

"The situation is as follows: In order to satisfy all parties concerned, I have to get about a ton or more of smokeless briquettes which give as much heat or more than coal, but stand the necessary fire test before these parties will proceed with handing over their checks, for which, of course, I cannot blame them."

Also in this letter Mr. Crossman suggests that in the event that briquettes could not be secured from the competitive plants in Harrisburg or Richmond, Levensohn might make up a ton or more by hand, apparently forgetting that it would take three men, working steadily ten hours per day, ten days to accomplish this end.

Up to July 20, 1917, Crossman had not consummated royalty agreements with Levensohn or Dr. Gamble for the use of their binders, and thereupon, Mashek, in a letter dated July 20, 1917, copy of which

is attached hereto, discloses to Crossman his (Mashek's) binder formula and process. The entire application of this formula is so minutely described that one would expect Crossman to resent this evident reflection on his knowledge of mixing briquette binders.

After receipt of Mashek's letter of July 20, Crossman appears much relieved, and in his letter of July 25, addressed to Mashek, and attached hereto, he stated: "We are proceeding with our affairs just the same, Levensohn or no Levensohn, and with your kind assistance I feel satisfied that we will produce as good a briquette as originally intended."

In none of this early correspondence does Crossman mention his own secret binder formula and process, and referring again to this letter to the Hon. J. Gordon Battle, in the fall of 1918, he admits that his process is not patented as "my process is entirely automatic and the binder is unanalyzable."

I find upon investigation that briquette binder formulas are printed in textbooks and chemical engineering literature and that there are more than twenty such formulas on file in the Department of the Interior and Geographical Survey at Washington, D. C., free to the public.

Mr. Crossman failed to finance this original Briquetting Company, and on the strength of a contract between Crossman and Louis Roumangnac, see letter to J. Gordon Battle, the Burnrite Coal Briquette Company was incorporated in the State of Delaware, February 28, 1918. I have investigated as far as possible the methods used in the sale of the stock to the public in this second briquette company, and find that in almost every piece of literature issued by the company or its security sales affiliations, grossly misleading and absolutely untruthful statements are apparent. I attach hereto samples of literature published

at various times on which is indicated the false and misleading statements referred to. I point out particularly at this time a salesmen's information binder issued by Burnrite Coal Securities Corporation, signed by Peter Hagedoorn, president, and approved and countersigned by Burnrite Coal Briquette Company, F. M. Crossman, president, and I quote from the first page of said binder: "It must be distinctly understood that we will tolerate no misrepresentations to the investing public," and from page 16, in answer to the expected question, "Why is the present selling price of the Burnrite Common Stock \$3 per share when the par value is \$1 per share." "In the first place, additional capital was required for the establishment of material reserves which were considered absolutely necessary. In the second place, with the projecting and organizing of other plants, subsidiary to the Newark Company, it became necessary for that Company to find the money for advance expenses, which must be tied up pending the financing of each new property. For instance, the Plant No. 2 at Perth Amboy has already had many thousands of dollars advanced to it, and if the Parent Company had not furnished these funds, Perth Amboy would still be a 'bornin.' Yet if Newark stockholders are to enjoy a revenue from tonnage royalties and stockholdings from sale of rights, other plants must be financed and built. In this connection it should be fully understood that with the financing of the Perth Amboy plant completed, all these funds advanced will be returned to the treasury of the parent company and there be available for future plants."

There is absolutely no record of the establishment of material reserves, excepting an enormous quantity of unusable material now in the yard at the Newark plant, and there is no record that the Newark plant

advanced thousands of dollars to the Perth Amboy plant.

The sale of this stock on the curb market in New York City during the month of August, 1918, became so notorious that the officers of the company were summoned before the Capital Issues Committee, and, notwithstanding Crossman's statement in his letter to Hon. J. Gordon Battle that this stock was placed on the curb market by S. H. Osterweil, "over which we had absolutely no control," I submit letter by Herman E. S. Chayes, D.D.S., one of the directors, dated December 29, 1920, addressed to the Burnrite Coal Briquette Company, in which Chayes stated "that the dates on which I purchased stock of the Burnrite Coal Briquette Company, at the request of Mr. Crossman, to support the market, were August 26, 29, 30, 1918. The amounts involved are 3000 shares, for which I expended the sum of over \$7,000.00."

Notwithstanding Crossman's statement in open court on June 5, that he nor any member of his family were interested financially or otherwise in any of the securities and sales companies affiliated with the Burnrite Coal Briquette Company, I find, upon investigation, through a recognized commercial agency, the Bradstreet Company, that Mr. Crossman and his brother, I. C. Gyenes, were officers in every one of the ten companies named hereafter, and that all of these companies, excepting the plants, have a common office at 141 West Thirty-sixth Street, New York City.

1. The Burnrite Coal Briquetting Company was owned and controlled by F. M. Crossman.
2. Mr. Crossman is president and general manager of the Burnrite Coal Briquette Company, Newark plant.
3. I. C. Gyenes was the head of the I. C. Gyenes Company.

4. On December 1, 1920, Francis H. Crossman was secretary and treasurer of the Burnrite Coal Securities Corporation, and on December 6, 1921, his brother, I. C. Gyenes, was president and treasurer, and his stenographer and private secretary Miss M. E. Brock, was the secretary of this corporation.
5. The Burnrite Coal Securities Corporation of New Jersey was a subsidiary company of the Burnrite Coal Securities Corporation.
6. The Burnrite Coal Service Company is the name of the corporation now operating at 141 W. 36th Street under the management of I. C. Gyenes.
7. The Burnrite Briquette Engineering Company, incorporated July, 1920, for the purpose of building the Perth Amboy plant, has as its officers F. M. Crossman, president, and I. C. Gyenes, secretary and treasurer.
8. The Shamokin Valley Coal Sales Corporation, through which the Burnrite Coal Briquette Company buys its coal dust, has as its incorporators Herman Roth, counsel for the Burnrite Coal Briquette Company, and I. C. Gyenes, brother of F. M. Crossman.
9. F. M. Crossman has a private office at this same address.
10. Mr. Crossman is president of the Burnrite Coal Briquette Company of New Jersey.

I have read the minute book of the Burnrite Coal Briquette Company and find that at the directors' meeting held September 28, 1918, the treasurer was authorized to issue 600,000 shares of common stock and 2150 shares of preferred stock, all at the par value of \$1 per share, to the Burnrite Coal Briquetting Com-

pany for its assets, which consisted solely of the so-called patented and secret formulas and processes of F. M. Crossman.

At the directors' meeting held January 22, 1919, a contract for the sale of stock with Ellis & Lewin was approved, and at this same meeting the treasurer was authorized to issue to Nat Chayes, a brother of Dr. Chayes, the director, 25,000 shares of common stock for his services in negotiating this contract.

In spite of the fact that the Burnrite Coal Briquette Company purchased all of the assets of the briquetting company, I find an agreement made July 29, 1919, between the company and F. M. Crossman, the preamble of which sets forth that the company is the owner of a formula and binder to manufacture coal briquettes, and that the said party of the second part, Mr. Crossman, "is the only person who has knowledge of the said formula and the application thereof." This contract, a copy of which is attached, employs Crossman as general manager for a period of ten years, and that in lieu of salary, a sum equal to 15 cents per ton for the first 100,000 tons, 10 cents per ton on the excess of 100,000 tons, and 5 cents per ton on the excess of 200,000 tons shall be paid to Crossman. The company also agrees to pay Crossman a sum equal to 5 cents per ton on all briquettes that may be sold by any subsidiary or licensee of the corporation. The important part of this contract, however, is that after the expiration of the ten-year period the corporation agrees to pay to Crossman, his assigns, etc., forever, a sum equal to 5 cents per ton on all the briquettes manufactured by the corporation and its subsidiaries and licensees, and in the sixth paragraph it is specifically stated that the corporation agrees to pay the said Crossman the sum of \$250 each and every week to be applied on moneys payable thereunder.

At directors' meeting held September 3, 1919, all the directors present voted themselves stock for valuable services rendered, and the stock and moneys authorized to be distributed were as follows:

Herman Roth, attorney, \$1500 in cash and 10,000 shares of common stock.

Mr. Rodemann, 35,000 shares of common stock.

J. J. Kennedy, 25,000 shares of common stock.

F. M. Crossman, 10,000 shares of common stock.

Dr. H. E. T. Chayes, 5000 shares of common stock.

At the following meeting, held November 25, 1919, Mr. Joseph Lucking, another director, who had paid cash for his stock in the company, was present, and the reading of the minutes of the previous meeting was dispensed with.

At the meeting of December 17, 1919, held at New York City, when only Mr. Kennedy, Crossman, Dr. Chayes and Rodemann were present, the minutes of the meetings of September 3, 1919, September 8, 1919, and November 19, 1919, were adopted as read.

At a meeting held February 21, 1920, Mr. Crossman assured the board of directors that the plant would be in operation March 6, 1920, and on July 9, 1920, only four months after this proposed starting date, Mr. H. H. Robinson, then president of the Burnrite Coal Securities Corporation, submitted a letter proposing the organization of the Burnrite Coal Briquette Company of New Jersey, at Perth Amboy, and on September 8, 1920, the Burnrite Coal Securities Corporation submitted an offer in writing to purchase 4000 shares of the common stock of this New Jersey corporation at \$3 per share, and actually submitted a check for \$5000 with the offer, in spite of the fact that this New Jersey corporation was not even organized at that time.

On September 9, 1920, a meeting was called at 4 P. M. to consider these two propositions, and thereupon Mr. Kennedy refused to have further connection with the company, immediately resigned, waived all his right to compensation and refused to accept the 25,000 shares of stock voted to him at the meeting of September 3d. Mr. Kennedy is the only director who refused to accept stock given gratuitously.

At this meeting, on September 9th, Mr. Robinson's proposition was accepted, the offer from the Securities Company was accepted, dividends were declared, and it was agreed that \$1,200,000 worth of stock of this New Jersey corporation should be divided among the stockholders of the Delaware corporation.

At the meeting of February 17, 1922, the directors authorized a first mortgage bond issue of \$100,000 and an agreement was made with Dwight S. Johnson, of Philadelphia, covering the sale of these bonds on a basis that would net the company 85 per cent. of par.

At the following meeting, held March 15, 1922, the treasurer was authorized to deliver to Mr. Crossman bonds to the amount of \$28,600 as security for moneys supposed to be due Crossman.

At the meeting held April 11, 1922, it was regularly moved and seconded that the president be authorized to negotiate with the Burnrite Briquette and Coal Company, a common law trust, for the sale of the exclusive rights of the process and formulas of this company for the States of New York, Pennsylvania and New Jersey, leaving the Burnrite Coal Briquette Company the right to manufacture and sell in the city of Newark.

I wish to point out that in the agreements made with the New Jersey company, the common law trust, etc., there is no mention of royalties for the company, but it is clearly stipulated that said agreements are



subject and conditional upon the continuance of the agreement between Crossman and the briquette company wherein he is to receive forever royalty on every briquette produced.

When we, the receivers, took charge of the plant on Thursday, May 11, we retained all of the employees of the company, including the treasurer, Mr. Rodemann, excepting Mr. Crossman, president, and Mr. Yorston, secretary, who had left the company previous to our appointment, and paid them salaries and wages up to noon of Saturday, the thirteenth inst. Inasmuch as the plant had been shut down for at least two weeks prior to our appointment, we discharged, upon advice of Mr. Buchan, plant superintendent, all the laborers and retained only himself and the foreman, Mr. Munson. We also retained the office force, with the exception of Mr. Rodemann, and Mr. Townley, who had charge of the sales.

We found, upon investigation, that the plant was not covered with fire insurance for more than \$10,000, and that the premiums on the liability insurance, payroll hold-up insurance, had not been paid and were about to be cancelled.

The Court order covering our appointment permitted us to operate the plant, and we immediately engaged the Mashek Engineering Company to make a report on the condition of the plant, so that we would know positively whether we were in position to manufacture efficiently and continuously. This examination showed that the plant was in no condition to manufacture, and that it would cost at least \$10,000 to put the plant in first class condition. Having been a machinery manufacturer in this city for seventeen years I am competent to check off and pass on the correctness of the report submitted by the Mashek Engineering Company.

We had no interest whatever in learning the details of the so-called Crossman formula, and have not had time as yet to examine the lock deposit box in the Fidelity-Union Trust Company to ascertain if there is really a formula or not.

We engaged certified public accountants, Puder & Puder, of this city, to examine the books of the company, and find many of the entries as set up on the books of the company are misleading and certainly not in accord with general bookkeeping practice. For example, I have analyzed the accounts receivable, and make a separate report of this item, and it is attached hereto. An analysis of the accounts payable shows that nineteen accounts aggregating \$1519.29 are under thirty days old; twenty accounts aggregating \$5967.74, under sixty days old; four accounts in amount \$80.63, under ninety days old, and twenty-six accounts amounting to \$5122.23, over ninety days old.

This company was not meeting its obligations promptly as they fell due, and they were not financially able to meet these obligations, as most of the accounts receivable, as set up on the books were uncollectable, and on the day we took charge the bank balance, as shown by check book, was \$138.75. The accrued payroll on that date was \$489.86, and said payroll was not satisfied until two weeks thereafter.

The accountant's report submitted shows that actual items of expense are carried on the books as deferred or intangible assets.

It is not a fact that this company has been operating profitably, as audits made by their own accountants show an operating loss for the year 1920 amounting to approximately \$70,000, for the year 1921 more than \$90,000, and our audit shows an actual operating loss of \$14,000 from January 1 to May 11, 1922.

We collected in accounts receivable \$1656.39 besides a certified check from H. C. Rodemann, in amount \$405.64, which we have not deposited, net cash sales amounting to \$1384.22, which amount includes an uncollected item of \$241.15, a sight draft placed in the bank June 6th. Our disbursements up to date for pay-rolls and trucking charges, including services of custodians, amounts to \$1304.59. Our bank balance today is \$2039.96, which does not include the Rodemann check and sight draft above referred to.

ALFRED L. KIRBY.

Subscribed and sworn to before me this tenth day of June, 1922.

J. EDWARD ASHMEAD,  
*Master in Chancery  
of New Jersey.*

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REPLY TO COMPLAINANT'S FIRST ANSWER-  
ING AFFIDAVITS.

(Filed June 19, 1922.)

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AFFIDAVIT OF FRANCIS M. CROSSMAN.

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STATE OF NEW JERSEY, {  
COUNTY OF                    } ss.:

Francis M. Crossman, of full age, being duly sworn according to law, upon his oath, says:

I am president and the organizer and also the principal stockholder of the Burnrite Coal Briquette Company.

I beg to refer to my affidavit, verified the seventh day of May, 1922, attached to the petition verified the seventeenth day of May, 1922, herein.

*History of Briquette Industry:* The briquette industry is a matter of recent development in this country. In Europe it is a much older industry and the value of briquettes and the method of manufacture of the same are better understood, so much so, that in Europe the price of briquettes is higher than the value of raw coal.

At the date of the last report of the United States Geological Survey, published September 19, 1921, on the subject of fuel briquettes, there were only seven companies reported to be operating in the United States in the manufacture of briquettes from anthracite coal.

In some of these reports the Government points out that the reason for the backwardness of the briquette industry in the United States is the fact that a suitable binder has not been discovered up to within the last few years to enable the briquettes to be so manufactured as to compete with anthracite coal in the anthracite coal using communities.

In the mining of anthracite coal millions of tons of small particles of anthracite coal go to waste annually, although this coal is the same in quality as the larger lumps which are used.

The object of the briquette industry is to bind these in such manner and in such sizes as to make them equally available with the larger prepared sizes of coal.

Your deponent has studied the problem for many years and has spent a fortune in bringing the product of the Burnrite Coal Briquette Company to its present state of efficiency, as will herein be stated.

*History of the Burnrite Coal Briquette Company:* Your deponent started in experimenting with coal briquettes in 1910. It was an interesting subject to him as a fuel engineer, and the question of utilizing all

these millions of tons of waste became an absorbing study, which consumed practically all of your deponent's time and a great part of his private fortune for a number of years.

As has previously been pointed out, the difficulty was in finding a suitable binder.

After many years of experiment with various binders and various combinations of materials for binders, your deponent finally discovered a certain combination of materials and processes of manufacture which laboratory tests showed would probably produce what was sought. Thereupon your deponent sought to commence manufacturing.

The Burnrite Coal Briquetting Company was formed in 1917 under the laws of Delaware, with a capital stock of \$500,000, \$350,000 of which was common and \$150,000 preferred, of the par value of \$10 per share. The secret processes and formulæ were turned over to this company in exchange for all of its capital stock; one-half of the common stock, and all of the preferred stock being returned to the treasury of the company for corporate purposes and your deponent retaining the other half for his years of experiment and large amounts of money expended.

Up to date your deponent has, in one way or another, expended fully, including losses sustained in sacrificing various other interests, \$250,000.

I believed that a plant could be erected for about \$100,000, and I had taken a few of my friends into this company with me, and we, together, had sufficient of our own means to erect a plant costing this amount of money.

While I had full knowledge of coal and coal products, I was not a mechanical engineer and did not have an accurate idea of what a plant suitable to my use and to manufacture what I had done in a laboratory way would cost. I approached Mr. George J.

Mashek of the Mashek Engineering Company, who represented to me that he was thoroughly efficient and able to erect a plant in accordance with my process and suitable to carry it out in a mechanical way.

He claimed that such a plant would cost nearly \$180,000, and I immediately saw that it was necessary to obtain additional capital.

Thereupon the Burnrite Coal Briquette Company, the present company, was organized under the laws of Delaware with a capital stock of \$1,500,000, of which \$1,200,000 was common stock of the par value of one dollar per share, and \$300,000 was 7 per cent. cumulative preferred stock of the par value of one dollar per share.

All of the property of the old company was turned over to the new company and new securities were issued for the old securities with the result that your deponent and his associates became interested in the new company in the same proportion in which they had been interested in the old company, namely, one-half of the common stock, the balance remaining in the treasury for corporate purposes.

All moneys necessary in the formative stages of the company were advanced by me out of my personal means. I paid the initial payment on the contract for the erection of the plant, the deposit on the real estate owned by the company, and laid out, in one way or another, for the company, a large sum of money, being upwards of \$60,000, covered by actual checks in my possession, and which appear upon the books of the company.

A contract was made with the Mashek Engineering Company for the erection of a plant on property purchased by the company and they proceeded to erect a plant.

I did not wish to burden the company with a large salary account during its promotion stages, and I

therefore made a contract with the company, most moderate in its terms, whereby I agreed to devote my services to the company as its president and general manager for a period of ten years, and my compensation was fixed by the company as follows:

I was to receive upon all briquettes sold up to 100,000 tons per year 15 cents per ton; from 100,000 to 200,000 tons per year 10 cents per ton; above 200,000 tons per year 5 cents per ton, and 5 cents per ton upon all briquettes manufactured by other companies under licenses from the parent company.

In this way the maximum which I could secure as salary with the present plant operating to a capacity of 100,000 tons would have been \$15,000 per annum. As a matter of fact, although I have been connected with the company since its inception in 1917, I have not received one penny from the company in royalties and the only moneys which have accrued to me for briquettes sold have been in the neighborhood of \$5200, \$3000 of which has been paid to me in the shape of preferred stock in the company, so that for my services for this long period of years and for the vast outlays of moneys which I have made, I have practically been paid no compensation except the prospects which I have in the future success of the company as represented by my share in the common stock and which would be destroyed if this receivership should result in the forced liquidation of the company.

I also owned 52,000 shares of the preferred stock, for which I paid cash at the same price that stock was sold to others.

In order to obtain money the company sold its stock to various brokers at prices varying from fifty to seventy cents per share, and possibly some stock was sold as high as one dollar, but not much.

In this way we raised the money necessary to

build our plant and buy our property and obtain whatever working capital we could.

The contract with the Mashek Engineering Company proved to be very unfortunate. I found them most inefficient. The blue prints were not ready when they should have been, with great resultant delays and confusion. The war came on about that time and prices of labor and material rose enormously, so that, taking all these things into consideration, the plant cost us upwards of a half million dollars, and the same plant was erected that the Mashek Engineering Company had previously stated to me would cost \$180,000.

The Mashek Engineering Company abandoned the contract before the plant was completed and functioning as a working plant.

The plant was abandoned by them because the plant was unable to turn out the product which had been produced in the laboratory by me and the plant did not function properly.

The directors refused to make the final payment for engineering services rendered by the Mashek Engineering Company under the contract and they brought suit. A large counterclaim was interposed in this suit for upwards of \$150,000 as damages for the breach of contract committed by the Mashek Engineering Company. The suit was settled to avoid the delays and worries incident to litigation, by the payment to the Mashek Engineering Company of the sum of \$5000.

The statement made by George J. Mashek in his affidavit that he revealed to me the formulæ for the binder which is in use is most absurd.

These formulæ were the result of years of experiment and study on my part, and fortunately I have documentary evidence to prove, beyond peradventure, that it was my formulæ and not his that is used by this



company under its processes. We attach hereto a letter written by George J. Mashek, bearing date April 8, 1918, marked "Exhibit A," in which he says:

"You will note that in our proposal we guarantee the machinery for one year, and the performance of this plant in reference to capacity and quality of product. The reason we are enabled to do this without taking any chances on our part, *using Mr. Crossman's contemplated binder* and making a high grade domestic fuel to compete with prepared sizes of anthracite coal, is because we have made considerable quantities of briquets using this binder in a commercial plant we have built which was not equipped to use this binder and therefore the briquets were made really under adverse conditions. We have submitted the briquets to you for tests. We are not expressing an opinion as to their high qualities, which opinion in this case might be considered to some extent prejudiced, and are leaving the question to others whose letters of recommendation speak for themselves, and you can rest assured that when coal dealers, critical users and others who are experts on fuels, and, as far as we know, have never given such recommendation to any other briquet, it means that *your briquet is not only equal to anthracite coal but must be superior.*"

*"In our eighteen years' experience building briquetting machinery and plants, we do not know of any other undertaking in this line that offers as good a promise of large returns on the investment in the plant as yours will."*

We also beg to attach hereto another letter from Mr. Mashek to F. M. Yorston, dated December 28, 1917, marked "Exhibit B," from which we quote as follows:

"The formula that Mr. Crossman contemplates using is different from any of the other

formulas that are in use, although practically most of the ingredients to some extent individually have been used or tried out. The raw materials entering into the binder are a staple article of which there is practically an unlimited supply, and from our knowledge of the production of these materials, we know that the increased demand will lower the cost as they are practically all by-products for which there is a limited market to-day.

“We have tested this binder exhaustively. It produces a hard briquet that remains so during combustion. The binder is all combustible; the briquet is not affected by heat nor moisture; and the cost of the binder is really lower than the objectionable and smoky coal tar pitch.”

The financial situation of the company has been fully set forth in the affidavits of the treasurer of the company, Mr. Rodemann, and the company's accountant, Mr. Edward C. Smith, which are attached hereto. In connection therewith I simply wish to point out that most of the indebtedness of the company is owing to me and my wife for moneys which it required.

I am satisfied that the company is now in a condition to manufacture briquettes which will meet the demand of the public and which are the best briquettes made in the market today, superior to anthracite coal in every way.

The coal strike is now on and a great shortage of anthracite coal will necessarily follow. I have had conversations over the telephone and orally with various dealers which make it certain that the entire output of the company can be sold and the company is now prepared to turn out briquettes in quantity.

I am prepared to continue to advance money to the company as it requires it and I am willing to secure myself by its securities until the company is in a position to repay me from its earnings.

On the other hand, if receivers are placed in charge of the property, I being the principal creditor, will be forced to take action, much against my will, the direct result of which will be to deprive the other stockholders of the company of their equity therein. I have no desire to do this. My desire is to protect all of the stockholders of the company, the great majority of which are out of sympathy with this application.

As late as June, 1921, there was a meeting of stockholders of the company, at which most of the stockholders were present, either in person or by proxy, and a resolution was passed of confidence in the management, which resolution is spread at length upon the minutes of the company. This resolution was passed at a meeting for the election of directors.

It is very important to note here that at the last meeting of stockholders the directors were elected by the other stockholders of the company, as I purposely refrained from voting my stock in order that the stockholders of the company, other than myself, might fairly say that the directors were their representatives.

The attorney for the plaintiff in this action, Mr. Joseph L. Smith, was present at this meeting and he nominated one of the present directors, Mr. Harry Stackell, and suggested the nomination of another director, Mr. George M. Rubinow, and when he made these nominations he was acting under a proxy from the plaintiff in this action. The affidavit of Mr. Rubinow is attached to the defendant's petition and is verified the seventeenth day of May, 1922, and the affidavit of Harry Stackell is attached hereto.

The stockholders have been kept fully advised of the financial situation of this company. Expert accountants have been placed upon the books from its

inception. Various balance sheets have been sent to the stockholders and nothing has been kept from them as to the financial condition of the company.

*The affidavit of the receivers verified the twentieth day of May, 1922, in response to petition of defendant to vacate receivership:*

With respect to their statement that they found that the company had not been manufacturing for sometime prior to their appointment, the plant was run intermittently until May 6, 1922, and the reason for the shutdown was the fact that during the months of May and June there is very little business done in the coal business as the winter season is passed and that time is used for cleaning up and making such repairs as will put the plant in first-class condition to resume operations during the summer months.

It is not true that we did not have material on hand to enable the receivers to begin to manufacture if they had so desired. There was plenty of material on hand of all kinds except one material, which was on its way to the plant and the receivers have received same before they made their affidavit.

They state in their affidavit that several creditors of the defendant had been demanding payment. None of the creditors were pressing the company, but naturally when creditors hear that a receiver is in possession, they become alarmed and demand their money. No suits, however, have been commenced by any creditor.

We beg to call the Court's attention to the fact that the receivers have refused to accept coal being delivered, as set forth in their affidavit.

With respect to the statement made in their affidavit that a foreclosure has been commenced against the company upon a mortgage upon certain property

and that a reply should be interposed to the said foreclosure proceedings, we beg to state that this mortgage is not due as the same has been extended and an answer has since been interposed to said foreclosure action.

The question of the operating loss referred to in the affidavit has been fully covered in the affidavit of the accountant.

The reason why the operating loss has been shown is because the large expenses and overhead of the plant during its experimental stage, which did not end until very recently as fully set forth herein, was charged to operating expenses, whereas it is customary to charge the overhead and costs of plant alterations during the formative stages of the company to capital account, and had this been charged to capital account and credited to the processes and good-will of the company, this result would not have appeared upon the books.

As a matter of fact, every penny that was received by the company from stockholders is reflected in actual expenditure for plant, equipment and experiment and in actual and necessary overhead, and it is not the fault of the management of this company that the costs of labor and material during the war make the plant more expensive in dollars than its present replacement value.

I do not know what the receivers mean as to I. O. U.'s of the officers appearing in the petty cash box. They have not had the grace to state the amount of this indebtedness. One I. O. U. that I know of was my own in the amount of \$10 because I happened to be short of cash on returning from New York and this amount was repaid to the receivers prior to the making of the receivers' affidavit and I do not owe anything to the company in the way of petty cash or

otherwise and the company owes me a sufficient amount of money to have induced the receivers to have left this statement out of their affidavit.

With respect to the statement that all the coal sold to the company is furnished by a company in which the president is interested, this is absolutely untrue. Most of our coal was bought from such people as the Weston, Dodson Coal Company, a very well-known and reputable concern, in which deponent is not interested; the Jonathan Coal Company, in which deponent is not interested, and the Deibler Coal Company, in which deponent is not interested, and only the small amount of eleven cars of coal were sold through the Shamokin Valley Coal Sales Corporation, of which deponent is president and chief stockholder, and this was sold at the market price and the coal was sold to the company by the Shamokin Valley Coal Sales Corporation because the defendant was obliged to buy the coal on credit and I was willing that the company should give them credit as long as it needed it. As a matter of fact, I have purchased a large block of stock in a coal company in Pennsylvania which has on storage millions of tons of a high grade coal dust for briquette-making purposes, for the sole purpose of obtaining a number of years' supply for the defendant at a fixed rate, below the market price of coal. I was about to turn a contract over to the company at the coming stockholders' meeting, securing to them this number of years' supply of coal at a cheap price without any profit to me, which will be lost to the company and its stockholders if this receivership is continued.

*The affidavit of George J. Mashek, verified the twentieth day of May, 1922:* All of the material allegations in the affidavit of George J. Mashek are untrue. I have already alluded to the false statements

with respect to the alleged furnishing of the formula for binder by Mashek.

Mashek furnished two patent machines to the plant, one a mixer and the other a press. The rest of the plant is standard machinery brought from various concerns throughout the country who furnish standard plant machinery of that type.

The plant did not produce proper briquettes at the time that we took charge of it after the Mashek Engineering Company abandoned its contract.

We have been, ever since that time, improving on the plant and spending money, time and labor for the purpose of correcting the difficulties in the plant and bringing it up to a standard of efficiency, and this has taken us from 1919 until the beginning of 1922.

As a matter of fact, it is not until now that the plant is functioning so that we can make briquettes which are perfect and marketable at a satisfactory profit and it is at this time that Mashek again attempts to destroy what we have built.

Even Mashek states in his affidavit that now "a somewhat better briquette is being produced at this time than was the case at the beginning of the operation of the plant," and yet in another part of his affidavit he says, "the plant is not in a condition at the present time to produce as good briquettes as can be produced in this plant." He also states in his affidavit that "some secret addition was added so as to eliminate the sulphurous odor of the product." As a matter of fact, this is an admission that there was a sulphurous odor in the product at the time he constructed the plant, and the elimination of the sulphurous odor is one of the most important features of the entire product, brought about by the secret materials and processes used and which are evidently finally admitted by Mashek.

With respect to the last paragraph of Mashek's affidavit, he enumerates a number of plants which he has constructed "using processes and machinery very similar to that as installed in the Burnrite Coal Briquette Company plant." This is not ignorance, but deliberate falsification, because none of the plants use either the formula or process used by the Burnrite Coal Briquette Company.

The Anthracite Coal Briquette Company, Ltd., plant in Toronto, which he says he has equipped, was a complete failure and is out of existence and never used the binder that the Burnrite Company is using; on the contrary, they used a straight sulphide and asphalt mixture which is not the mixture being used by the Burnrite Coal Briquette Company.

The Anthracite Coal Briquette Company of Sunbury, Pennsylvania, is a small concern using asphalt binder, which is totally dissimilar to the binder being used or the process employed by the Burnrite Coal Briquette Company.

The American Briquette Company, of Lykens, Pennsylvania, Mr. Mashek, to my knowledge, has never sold them a single piece of machinery, as practically all of the machinery, other than standard conveying machinery, was bought from the Vulcan Iron Company, of Wilkes-Barre, Pennsylvania, and the binder is a patented binder of starch and oil known as the Hite Process, and is totally dissimilar to the one employed by the Burnrite Coal Briquette Company.

The Delparen Anthracite Briquette Company, of Paret, Virginia, had to be rebuilt by the company after the Mashek Engineering Company installed the plant in order to make it function properly, and are using a straight asphalt binder, which is a different binder than used by the Burnrite Coal Briquette Company and it requires a totally different process for its manufacture.



As I do not know the number of other plants located in the Far East referred to in his affidavit, I can say nothing about them.

The Stott Briquette Company, of Superior, Wisconsin, are using a straight asphalt binder which is a totally different binder than used by the Burnrite Coal Briquette Company and requires a different process entirely for its manufacture.

The Berwind Coal Company, of Superior, Wisconsin, was built by the General Briquette Company, of New York, and the Mashek Engineering Company had no part whatever in its construction or in supplying the machinery to it. They use a straight oil process which is quite different from the process used by the Burnrite Coal Briquette Company.

The improvement in the process is indicated by the table attached to the affidavit of John B. Buchan, verified the third day of June, 1922, to which affidavit and exhibit reference is here made.

*Affidavit of Francis M. Yorston, verified May 20, 1922, submitted on behalf of the plaintiff in reply to the petition herein to vacate the receivership:*

Yorston is the secretary and a director of the company and holds 1000 shares of stock which he received as a present from the company and for which he paid no consideration.

As general manager of the company I employed Yorston as plant manager some time in March, 1920, and subsequently he was elected a director and secretary of the company.

During recent months he persisted in giving credits to concerns without financial standing, contrary to my express instructions, and he was very severely criticized by me for this and some of the other directors.

I also heard rumors that he was plotting with the engineer employed by the company against the company and attempting to sell some formula for the manufacture of briquettes. I taxed him with this and he denied it point blank.

Subsequently I received confirmation of the rumors and I again taxed him with it, whereupon he admitted it in the presence of the treasurer, Mr. Rodemann, and admitted that he had lied to me, whereupon I told him that his services were no longer required and that I wished him to resign as secretary and director. This he refused. Annexed hereto and marked "Exhibit C" is a letter which he sent to the company.

I also annex hereto and mark "Exhibit D" a contract which he made with the engineer of the company, whose affidavit is submitted herewith, concerning the sale of certain formulae. The formula attached to the contract is not the formula used by the company, but is a formula which the engineer concocted in the belief that he was using the formula of the company.

Yorston was discharged about a week before the meeting of directors which was called for May 11, 1922, at 4 o'clock P. M., and the receivers walked in and took possession at the hour appointed for the meeting and refused to permit the meeting to continue and told the officers and directors that they were not permitted to continue in the exercise of their functions, which prevented his removal as secretary and director, which was the first knowledge that I had of any attempt to have receivers appointed for the corporation in this suit.

I had previously instructed Yorston to call a meeting of stockholders, which was supposed to have been held the first week in May. These instructions he deliberately disobeyed, and a meeting of stockholders was going to be called subsequently when this application prevented the same.

As soon as, and if the receivers are removed, and the restraining order vacated, the meeting will immediately be called.

I deny that I purchased inferior materials as set forth in the affidavit of Yorston.

I deny that I told Yorston that I would not loan any more money to the company.

The contract referred to with Jonathan P. Edwards, in Yorston's affidavit, was in the opinion of your deponent a very valuable contract to the company and was fully discussed by the board of directors at its regular meetings and was considered by them to be a valuable contract, and your deponent was authorized to negotiate along the lines of this contract, which is simply to sell certain territorial rights for a royalty and in addition a large block of stock in the company receiving the rights.

That deponent is not analyzing the affidavit of Yorston with great particularity because his motive is perfectly apparent and his statements are not to be relied upon, his hostility and his reason for being resentful are perfectly apparent.

*Affidavit of Albert B. Diss, verified May 20, 1922, in reply to the petition of defendant to vacate the receivership:*

I deny the statement in the affidavit of Albert B. Diss that the directors and the management were discouraged and I admit that the plant did not operate continuously for the reasons which I fully set forth in this affidavit.

*Affidavit of Guido P. Monticello, verified May 20, 1922, in reply to petition of defendant to vacate the receivership:*

Monticello is doing business as the Union Coal Company, of Elizabeth, and I have ascertained that

he is not financially responsible and was formerly associated with Yorston in business in New Brunswick, and that Mr. Yorston had set him up in business at Elizabeth, New Jersey, and had given him credit with the Burnrite Coal Briquette Company way beyond his financial responsibility, contrary to my express instructions. I instructed Yorston that the credits should cease and the account should be paid forthwith. Nevertheless, Yorston shipped him briquettes after this time, and this was one of the many reasons why Yorston was discharged.

After Yorston was discharged I wrote to the Union Coal Company, which is Monticello, stating that Yorston was no longer employed by the company and that they would be required to make payment of their account, amounting to upwards of five thousand dollars, at once. Monticello had not paid his debt to the company at the time of the appointment of the receivers, and I am informed and believe that he has not, up to this time, made any payment, and that his account is still due the company.

*Affidavit of Alfred Stahl, verified May 20, 1922, in reply to the petition of defendant to vacate the receivership:*

I deny that at the meeting of stockholders in April, 1922, I stated that the company needed money from the sale of its bonds for current expenses and that the company was greatly indebted. I did state that the company issued these bonds for the purpose of obtaining working capital to purchase quantities of coal which could now be obtained at low prices and which was needed by the company in order to produce quantities of briquettes which could readily be sold at a high price on account of the coal strike.

*Affidavit of Frederick C. Buchholtz, verified May 20, 1922, in reply to the petition of defendant to vacate the receivership:*

Mr. Buchholtz was employed by me for the purpose of analyzing coal at the plant and I found him so inefficient in analyzing coal that I was obliged, while he was still there, to get analyses at various times in other laboratories, which entirely disagreed with the analyses of Mr. Buchholtz.

Mr. Buchholtz was a young man and received a salary from the company of fifty dollars a week, and worked for the company for about a year when his services were dispensed with.

His statement that "to the best of his knowledge and belief there is nothing secret about the binder formula used by the company" his knowledge and belief is incorrect. The binder formula is the secret discovery made by me. The binder formula I use is not to be found on file in the Bureau of Mines, and if his affidavit is carefully read it will be found that he does not assert that it is.

In conclusion I beg to reiterate that the only circumstances under which this company is able to go ahead and manufacture is under its present management, for the simple reason that its present management is willing to furnish it with working capital to go ahead and make it successful, and I am informed and verily believe that the plaintiff is not of financial means to do the same thing.

As I and my wife are the principal creditors, the only effect of forcing this company into receivership and liquidation will be to wipe out the stockholders, other than myself, on account of the fact that I am secured by a mortgage on the property for my advances.

I am not desirous of doing anything other than

protecting the other stockholders in the company and working out the company's salvation for their benefit, as well as my own.

In view of the coal strike a wonderful opportunity has come to the company to make a good deal of money and to manufacture and sell a large quantity of briquettes. It is necessary for us to immediately proceed to manufacture.

The application for a receivership is not made in good faith because no solution of the present situation is in any wise suggested in the moving papers. The only possible solution is liquidation, which will mean loss to everybody concerned.

FRANCIS M. CROSSMAN.

Sworn and subscribed to before me this third day of June, 1922.

WM. W. SHAW,  
*Master in Chancery*  
*of New Jersey.*

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EXHIBIT A.

New York, April 8, 1918.

Burnrite Briquette Co.,  
149 Broadway,  
New York City.

*Attention of Mr. M. F. Crossman, V. Pres.*

Gentlemen:

Confirming conversation with and statements made to your Directors, will say that we have examined the plant site you have purchased in Newark, N. J., which in our opinion is an ideal location, with good paved streets from this site to all parts of the city, and also about a block from one of the largest Anthracite coal mining company's distributing pockets, so

that for delivery of the product to any part of Newark it is ideal; in fact, we believe a better location could not have been selected. Your side track connecting at the junction of two leading Anthracite roads entering Newark, which side track is now partly completed, gives you first class facilities for receiving raw material and shipment of briquets in earload lots.

At your request, we have prepared and are sending you today a preliminary drawing showing the arrangements of the plant buildings and yard for storage of raw material and its recovery from this storage pile to the plant automatically. This drawing, together with specifications, describes every piece of machinery for the proposed plant. We are also sending you our proposal for building and equipping this plant to be turned over to you in operation. Please note that the arrangement of the plant provides for storage of sufficient raw material during the summer months when transportation is easily obtained and anthracite dust is at the lowest price, so as to enable you to operate four to five months during the winter without receiving any additional raw material during that time.

Basing your output at approximately 100,000 tons per annum, you really produce in this plant only a very small percentage of the domestic coal consumed within a reasonable radius of delivery.

You will note that in our proposal we guarantee the machinery for one year, and the performance of this plant in reference to capacity and quality of product. The reason we are enabled to do this without taking any chances on our part, using Mr. Crossman's contemplated binder and making a high grade domestic fuel to compete with prepared sizes of anthracite coal, is because we have made considerable quantities of briquets using this binder in a commercial plant we have built which was not equipped to use this binder

and therefore the briquets were made really under adverse conditions. We have submitted the briquets to you for tests. We are not expressing an opinion as to their high qualities, which opinion in this case might be considered to some extent prejudiced, and are leaving this question to others whose letters of recommendation speak for themselves, and you can rest assured that when coal dealers, critical users and others who are experts on fuels and, as far as we know, have never given such recommendation to any other briquet, it means that your briquet is not only equal to anthracite coal, but must be superior.

Your estimated cost of manufacture, which we have gone over carefully, we consider correct for the reason that we are familiar with all the ingredients you propose using, know that they are practically all by-products of small commercial value, are practically all carbon and can be obtained in any quantities at prices which, if anything, would be lower with their increased use. The principal binding materials are smokeless in themselves and produce no deposits to clog up pipes. The briquets made with this binder produce as clean and hot a fire as the best quality of prepared sizes of anthracite coal, the briquets themselves being entirely odorless, clean and during combustion do not give off any more objectionable odor or fumes than natural anthracite coal.

All the machinery equipment to properly prepare this binder and manufacture the briquets is of our standard size, no part of which is untried or experimental.

In our eighteen years experience building briquetting machinery and plants, we do not know of any other undertaking in this line that offers as good a promise of large returns on the investment in the plant as yours will.



If there is any other information or data that we can give you in reference to this plant that you might desire, please let us know.

Yours very truly,

MASHEK ENGINEERING COMPANY

Per G. J. MASHEK,  
*President.*

G.J.M.A.

EXHIBIT B.

Dec. 28, 1917.

Mr. F. M. Yorston,  
Secy., The Board of Trade,  
New Brunswick, N. J.

*Re: Briquet Binders and F. M. Crossman's Formula.*

Dear Sir:—

We have received your letter of the 27th in reference to various processes and formulas of binders for briquetting of coal to produce practically a smokeless briquet, and in reply will say that our catalog #4, published in 1916, of which you have a copy, states that there are a number of patented and secret binders which can be obtained on a royalty basis. This statement really to some extent should have been qualified by the class of royalty that the different inventors and promoters of these binders usually ask. Some of them have been asking a royalty per ton without wanting any interest in the company buying such royalty, usually with considerable payment in advance.

Since that catalog was published, several of these binders, while making a fair briquet, did not turn out in cost per ton and product produced, up to the original expectations of the inventors and proposed users. Others that have given excellent results with certain coals, failed entirely on other coals; that is, they might

briquet some coals and produce a fair product, but when briquetting our ordinary Anthracite, the product was not hard enough and smoky, having very little or no advantage over plain asphaltum; in fact, one of these binders, backed by a company of almost unlimited means, has been abandoned altogether and they are using plain asphaltum, which is not a patented or a secret binder. This binder answers the purpose in certain sections of the country where the people have not been brought up in the habit of using anthracite coal.

To compete in a market with Briquets against Anthracite coal, or in the Anthracite coal burning area, a practically smokeless briquet must be produced—one that gives no odors of any kind and that does not require any new training or special rules to burn it, but that can be burned the same as ordinary coal without any additional attention or instructions.

Other inventors, instead of asking for a direct royalty with a contract extending over many years, have such faith in their proposition that they are willing to take their royalty in the form of securities of the company, for their binder and in some instances for their labor in promoting and incorporating briquet manufacturing industries. We have been trying to encourage people to do this very thing, as the inventor will seldom want to work and take his pay in securities of the value of which he may be in doubt. It at least shows good faith and necessarily must have the inventor's undivided interest to work for the success of the undertaking.

The formula that Mr. Crossman contemplates using is different from any of the other formulas that are in use, although practically most of the ingredients to some extent individually have been used or tried out. The raw materials entering into the binder are a staple article, of which there is practically an

unlimited supply, and from our knowledge of the production of these materials, we know that the increased demand will lower the cost as they are practically all by-products for which there is a limited market today.

We have tested this binder exhaustively. It produces a hard briquet that remains so during combustion. The binder is all combustible; the briquet is not affected by heat nor moisture; and the cost of the binder is really lower than the objectionable and smoky coal tar pitch.

We have such faith in this formula that we are willing to take the contract for the construction and equipment of a briquet plant and guarantee that it will produce such briquets at a fixed cost and specified output per hour. The carrying out of the process is really simply; in fact, our patented machinery and processes that we have covered by patents are adaptable for this binder.

We have also made Mr. Crossman a proposition that we will build this first plant on a small profit; either on a lump sum or percentage of cost basis, in order to get a plant started using this binder, taking our chances that we will do more business with Mr. Crossman the moment the first plant is in operation.

We are not at liberty to disclose what the ingredients of this binder are, but their suitability is such that even to the uninitiated their value for this purpose is self-evident.

If there is any additional information that we can give you on this subject, we would be glad to hear from you.

Yours very truly,

MASHEK ENGINEERING COMPANY.

GJ.M.A.

EXHIBIT C.

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Mr. F. M. Crossman, President,  
Burnrite Coal Briquette Co.,  
Newark, N. J.

Dear Sir:

Following our conversation of last Friday, and after giving full consideration to your suggestion that I should resign as manager or be removed by you as General Manager, also that if I did not resign as a Director and Secretary of the Company, you would be compelled to call a special meeting of the Directors and ask for my removal. In both of the above matters please be advised that I have no resignation to offer. You are therefore at liberty to use your prerogative.

Respectfully submitted,

(Sgd.) F. M. YORSTON.

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EXHIBIT D.

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MEMORANDUM OF AGREEMENT, made and entered into this Twenty-fourth day of April, Nineteen hundred and twenty-two, by and between JOHN B. BUCHAN, of the City of Newark, in the County of Essex, and State of New Jersey, party of the first part, and F. M. YORSTON, of the Borough of Highland Park, in the County of Middlesex, and State of New Jersey, party of the second part:

WHEREAS, the said John B. Buchan, party of the first part hereto, has invented and developed a new process for binding coal for the manufacture of artificial fuel, the product being known as "Briquettes,"

a copy of which is hereto annexed and made a part hereof;

AND WHEREAS the said F. M. Yorston has assisted, and is assisting, and will continue to assist the said party of the first part in the exploitation of the said process, and the interesting of capital in a corporation for the manufacture and sale of the product;

NOW THEREFORE THIS INDENTURE WITNESSETH, that the parties hereto, in consideration of the premises, and of the sum of One dollar each to the other in hand paid, have mutually covenanted and agreed, and by these presents do mutually covenant and agree that the parties hereto shall each have a one-half interest and ownership of, in and to the said process, together with any improvements or developments thereof, in such manner that the said process shall not be sold or transferred in whole or in part, or any rights thereunder be created or granted by license agreement or otherwise, except with the consent of both the parties hereto.

The parties hereto further covenant and agree that they shall bear in equal shares such expenses as may be incurred in the exploitation of the said process, and that they shall share equally in all income, royalties and profits which may in any way arise therefrom.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

JOHN B. BUCHAN (L. S.)  
F. M. YORSTON (L. S.)

Signed, sealed and delivered in the presence of

A. DUDLEY WATSON.

*Process Referred To.*

200 gallons of water are brought to the boil, to which is added from 2 to 5 lbs. of nitre (nitrate of soda) and a bag of starch (140 lbs.). In the meantime an emulsion is made of 2 gallons of silicate of soda and  $\frac{1}{2}$  to 1 gallon of crude oil (the quantity varying according to the melting point of the hydro-line, as when this product melts below  $170^{\circ}$  F. it requires less, and above  $170^{\circ}$  F., more). As soon as the starch mixture begins to gelatinize (become transparent), then 40 gallons of hydroline are run in and thoroughly incorporated. I have proved that by the addition to the nitre, the use of bituminous coal with the anthracite coal is unnecessary.

By the use of the crude oil emulsion the hydroline is brought into the coal in a form that it is impossible *not* to obtain a thoroughly *homogeneous* mixture which is absolutely necessary for the manufacture of briquettes of a standard quality. By this process the ash contents of the finished briquettes should not increase more than 1% over the coal used (dried at  $105^{\circ}$ ).

JOHN B. BUCHAN.

24—4—1922.

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AFFIDAVIT OF JACOB S. ROBESON.

STATE OF NEW JERSEY, {  
COUNTY OF HUDSON, { ss.:

JACOB S. ROBESON, of full age, being duly sworn according to law, upon his oath, says:

I reside in the Borough of Pennington, Mercer County, New Jersey. I am a chemical engineer and have practised my profession for more than thirty years

last past. I have been interested in the manufacture of coal and mineral briquettes for about twenty years last past, and have devoted my time and study especially during that period, to the subject of binders and binder materials. I have acted as the consulting engineer for the Pennsylvania Steel Company of the State of Pennsylvania, and the Carnegie Steel Company of the State of Pennsylvania. I was president of Robeson Process Company from 1905 to 1914, and during that time was engaged in the manufacture of various products from sulfite cellulose liquor, which is the base for many binding materials.

Since 1914 I have maintained and still maintain a chemical and physical laboratory for the purpose of and engaged in research on products of sulfite cellulose liquor, with a special reference to the use of these products as binders for mineral briquettes and road surfaces.

In 1920 I organized the J. S. Robeson, Inc., a corporation of the State of Delaware, which has been since that time, and now is, engaged in the production of the last mentioned materials commercially.

Since 1900 I have been in close touch with the mineral and coal briquetting industry. Throughout this period I have been in either personal or written communication with every commercial briquetting operation in this country and numerous others in Europe. I am at present in written communication with all the successful coal briquetting operations that are going on in the world. I have known of Mr. Francis M. Crossman and of his activities in coal briquette operations for about ten years last past, and have known Mr. Crossman personally, for about four years last past. I am familiar with the coal briquette produced at the plant of the Burnrite Coal Briquette Company at Newark, New Jersey, of which Mr. Crossman is the

president, and have examined samples of it upon at least twenty different occasions. The Burnrite briquettes which I have examined have improved in quality from the time of my first examination of them, when they tended to soften on the fire and give off a little smoke in burning, gradually until now, they represent a very satisfactory briquette from the consumers' standpoint, and at the time of my last test or examination, which was about two months ago, they have reached the stage when they were in the best state in which I found them at any time that I tested or examined them, and at that time they were free burning, without smoke, retaining their shape until the carbon was entirely consumed, leaving but a small amount of ash, which was free from clinker, and without smoke or odor. It is essential to the commercial success of any coal briquette made from sulfite cellulose liquor that the odor of that burning liquor be eliminated. It is essential to the commercial success of any coal briquette, especially if it is to compete in a territory where anthracite coal is the natural fuel, that, among other things, it should

- (a) burn without smoke
- (b) burn without odor
- (c) burn without softening or loss of shape
- (d) ignite freely and burn continuously without excessive draught
- (e) be weather resistant
- (f) bear handling without excessive loss.

The briquettes last examined by me from the Burnrite plant fulfilled all of these conditions and were, in my opinion, the best coal briquettes made on a commercial scale that I have ever seen.

I have read the affidavit of George J. Mashek, verified May 20, 1922, read in support of the appli-



eration for a receiver herein. I note that Mashek says that Mr. Crossman added something to the formula to remove the sulphurous odor of the briquette. Such addition was absolutely necessary, and if it succeeded in eliminating the odor, was highly beneficial.

The Anthracite Coal Briquette Company, Ltd., plant in Toronto, which he says he has equipped, was a complete failure and is out of existence and never used the binder that I am advised the Burnrite Company is using; on the contrary, they used a straight sulfite and asphalt mixture which is not the mixture being used by the Burnrite Coal Briquette Company.

The Anthracite Coal Briquette Company of Sunbury, Pennsylvania, is a concern not now operating, and which used asphalt binder and not sulfite liquor. This is totally dissimilar to the binder I understand is being used or the process employed by the Burnrite Coal Briquette Company, and the machinery required is of an entirely different sort.

The American Briquette Company of Lykens, Pennsylvania, was equipped by the Vulcan Iron Company of Wilkes-Barre, Pennsylvania. The binder is a patented binder of starch and oil known as the Hite Process and is totally dissimilar to the one I understand to be employed by the Burnrite Coal Briquette Company.

It is a matter of common knowledge in the trade that the Delparen Anthracite Briquette Company of Paret, Virginia, had to be rebuilt by that company after the Mashek Engineering Company installed the plant, in order to make it function properly.

The Stott Briquette Company of Superior, Wisconsin, are using a straight asphalt binder.

The Berwind Coal Company, of Superior, Wisconsin, was built by the General Briquette Company of New York. They use a straight oil process which is

different from the process which I understand to be used by the Burnrite Coal Briquette Company.

The Mashek Engineering Company has patented certain machinery which are used in the coal briquette industry and these machines are sold by them, but this company is not regarded by the engineering profession as being successful briquette manufacturing engineers.

I have examined and tested the product of the Burnrite Coal Briquette Company. They make today the best and highest grade briquettes in the market, superior to those manufactured by any other company that I know of. This result is achieved by the use of certain materials as a binder (which I understand are secret processes of the Burnrite Coal Briquette Company) brought about by improvements made which eliminate many of the objectionable features of other briquettes on the market.

J. S. Robeson, Inc., has supplied sulfite cellulose binders to the Burnrite Company for about a year and a half last past. The contract for these supplies was negotiated by me with Mr. F. M. Yorston, and not with Mr. F. M. Crossman, and most, if not all, the verbal orders for the materials supplied under that contract were made by Mr. Yorston.

JACOB S. ROBESON.

Sworn to and subscribed before me this third day of June, 1922.

WM. W. SHAW,  
*Master in Chancery,*  
*of New Jersey.*

AFFIDAVIT OF EDWARD C. SMITH.

STATE OF NEW JERSEY, { ss.:  
COUNTY OF HUDSON.

EDWARD C. SMITH, of full age, being duly sworn according to law, upon his oath says:

I reside at East Orange, New Jersey, and am a certified public accountant of both the States of New York and New Jersey.

I have been the regular auditor of the Burnrite Coal Briquette Company since it was formed.

I made a complete audit of the books up to December 31, 1921, and have continued this down to May 11, 1922, through the trial balances prepared by the regular bookkeeper of the company.

I found that the total tangible assets, as carried on the books of the company, amount to \$579,045.09. The company also carries as intangible assets on its books, consisting of formulas, processes, organization expenses, etc., \$862,858.17. Its current accounts payable as appear on the books amount to \$24,465.75. I am informed, however, by the officers of the company that all but \$17,220.55 of this sum is secured. Included in this latter sum is \$3338.50 due the City of Newark by way of assessment for the paving of New Jersey Railroad Avenue. This assessment I am informed is payable in five annual installments. It also includes the sum of \$6111.28 due the City of Newark for taxes. The balance is made up of the sum of \$7225.90 due the Burnrite Coal Service Corporation, which I am informed is an affiliated company, and a number of small items. There is also due on notes payable, \$30,266.96. I am informed that the greater part of these notes are held by the president of the corporation, Mr. F. M. Crossman, or his wife.

I have set up on the books as a reserve for depreciation the sum of \$47,888.99.

The books of the company show a loss for the year ending December 31, 1921, of \$90,334.72, but \$47,888.99 of this is depreciation, so that the actual loss was \$42,445.73.

The expenses of the company for the year include an item of \$16,091.47 for non-productive labor, that is to say, labor which was not instrumental in producing any of the company's product, but which it was presumably necessary for the company to have, both during the time that the plant was not operating and when it was operating.

The expenses also contain an item of \$13,291.82 for office salaries and expenses. Both of these items would be very largely absorbed if the plant were operated continuously.

The loss has been due, in my judgment, to non-continuous operation and the necessity of carrying a large overhead.

The loss from January 1st to May 11, 1922, is \$5607.08. This latter figure does not include depreciation.

According to the books of the company the total amount of common stock issued and outstanding is 1,199,400 shares and preferred stock 212,402 shares.

The books show that the discount on the capital stock of the company sold amounts to \$195,406 and the commissions paid on the sale of stock amount to \$57,052.17, thus there was received for the stock which was sold for cash, \$252,458.17 less than the par value thereof.

The capital assets of the company, as they appear on its books, are as follows:

Land		\$27,537.88
Land adjoining plant	\$4,936.62	
Less: Mortgage	2,350.00	
	<hr/>	2,586.62
Buildings		192,369.77
Railroad sidings		9,507.39
Machinery		304,783.62
Automobiles		2,350.00
Tools and implements		3,344.86
Patterns		1,266.00
Laboratory		1,151.75
Office Fixtures		2,803.72
		<hr/>
		\$547,701.61

The above items represent actual expenditures, a comparatively small part of which represents overhead during construction.

EDWARD C. SMITH.

Sworn and subscribed to before me this third day of June, 1922.

WM. W. SHAW,  
*Master in Chancery*  
*of New Jersey*

AFFIDAVIT OF HENRY C. RODEMANN.

STATE OF NEW JERSEY, {  
COUNTY OF HUDSON, { ss.:

HENRY C. RODEMANN, of full age, being duly sworn according to law, upon his oath, says:

I reside in the City of Newark, where I am engaged in the retail coal business.

I am the person who made the affidavit in this cause which was verified May 17, 1922. As stated

therein, I have been the treasurer of the Burnrite Coal Briquette Company, the defendant in this action, since its incorporation.

I have been at all times thoroughly familiar with the financial affairs of the company. I know that the company actually received in cash for stock which was sold \$557,193.83. The total discounts allowed on stock and commissions paid amounted to \$252,458.17. The number of shares sold for cash, as distinguished from those transferred for property, amounts to 809,652.

The company has not been, up until the present time, in a position to manufacture profitably. This has been due to the fact that we have had great difficulty in getting the plant and equipment in shape to properly manufacture in accordance with the formulas and processes which the company owned.

During the year 1921 we operated altogether between three and four months. The overhead expenses, however, went on just the same. During that time we were also required to expend considerable sums of money in making changes in and about the plant. This overhead and the cost of making these changes, both of which were charges to operating expenses, tended to create a loss for the whole year 1921, although if the amount realized on the sale of briquettes for the four months that the plant was operating can be offset as against the expenses for those four months a material profit would have been shown. The same applies to the first few months of this year.

I know that there will be a great shortage in coal during the ensuing year and consequently that there will be a very great demand for briquettes. My opinion in this respect has been confirmed by conferences with many coal dealers in Paterson and Newark, who have assured me that they will be able to dispose of

all the briquettes which we can possibly manufacture during the ensuing year.

I feel that now that the company is in a position to manufacture, and because, by reason of the coal shortage, there is an excellent market for its product, that we may look forward to the coming year with every confidence that it will show a very substantial profit.

The company has received assurances of such financial support as will be necessary during the next few months.

It would be very disastrous, in my judgment, to the interests of the stockholders, if this receivership were continued, because its ultimate result would be liquidation and the consequent sacrifice of the company's assets, to say nothing of the business, which we have expended a large sum of money in building up.

The company's total current indebtedness for bills and notes payable is \$58,788.02. Of this sum all but \$11,797.34 is secured. This latter sum represents a number of very small items all of which would have been paid in the ordinary course of business out of accounts receivable, had not the receivership intervened. Our accounts receivable amount to \$15,190.13. I do not know of any creditor of the company who has threatened to bring suit on his claim.

Deponent further says that he has read the affidavit of Francis M. Yorston, verified the twentieth day of May, 1922, in support of the application for a receiver in this cause. Yorston holds one thousand shares of stock in the company for which he paid no consideration. He is the secretary and a director of the corporation and was manager of the plant until he was discharged by Mr. Crossman.

Mr. Yorston was suspected of disloyalty to the company in that certain rumors came to the officers that Yorston was attempting to dispose of a secret process for the manufacture of briquettes. On the day of his discharge I was present at a conversation between Mr. Yorston and Mr. Crossman and overheard it. Mr. Crossman said to Mr. Yorston words to this effect: When I asked you the other day whether there was anything to this Johnson matter and you 'phoning to Philadelphia, you told me no. Mr. Yorston's reply to that was, "There was, and I lied to you." That afternoon Mr. Crossman discharged him as manager and requested him to resign as secretary and director, which he refused to do.

I have read the affidavit of George J. Mashek, verified the twentieth day of May, 1922, in support of the application for a receiver herein.

Mr. Mashek was the engineer who erected the plant and who was given full authority to erect the plant in accordance with his contract and to place the same in operation.

Prior to its completion, he abandoned his contract and our company did not receive a completed plant from him. On the contrary the plant was in such shape when he abandoned it that it has been necessary for the company to make continuous alterations and improvements, at great expense, ever since, and the plant cannot be said to have been completed so as to have been efficient and operating until the latter part of 1921.

Mr. Mashek brought suit against the company for a balance of \$9000, which he claimed as compensation under his contract. To avoid litigation the company settled with him in full of all claims for \$5000, and a great deal of feeling between Mr. Mashek and the company resulted.



In view of the experiences we have had with him others will have to speak of his qualification as an engineer.

I am very much surprised that the receivers have requested Mr. Mashek to examine the plant, as they must be informed of the bitter dispute between the present management and Mr. Mashek.

Mr. Mashek has stated in his affidavit that the plant today is arranged in the same manner as called for in the original drawings submitted by Mr. Mashek and as erected and installed under his directions. This is not true, numerous changes have been made in the plant.

He states in his affidavit that a number of machines have been allowed to run down so that many parts are in breakable condition and that some of the machines have been badly neglected, especially the mixer, and that parts are missing, making it impossible to make a good mixture, as is evidenced by the manner in which the briquettes burn. This is absolutely untrue. The plant is in first-class condition and the machines are taken good care of. The plant was in continuous operation, without breakdown or delay, from April 26, to May 6, 1922, a period of ten days, and on the prior occasions when it was run showed no evidence of the condition mentioned by Mr. Mashek.

I am not an engineer and therefore can only call attention to the very glaring errors in his affidavit.

I have read the affidavit of Francis M. Crossman, verified the third day of June, 1922, and submitted herewith, and the same is true in so far as I have knowledge of the matters therein contained, and as to the other matters therein contained, I believe it to be true.

I have read the affidavit of Guido P. Monticello, verified the nineteenth day of May, 1922, in support of

the motion for a receiver herein. Monticello, who is made chairman of this alleged Stockholders Committee, referred to in his affidavit, conducts a business under the name of Union Coal Company, at Elizabeth, New Jersey, and at the time that he made his said affidavit he owed the company for briquettes purchased by him, about \$5769, as appears by the books of the company.

I am informed that Mr. Crossman directed Yorston not to deliver any briquettes to this man because he was of no financial responsibility and that against Mr. Crossman's orders Mr. Yorston delivered briquettes for some reason unknown to your deponent despite Mr. Crossman's instructions, and that this was one of the several reasons why Mr. Yorston was discharged.

HENRY C. RODEMANN.

Sworn and subscribed to before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

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AFFIDAVIT OF JOHN B. BUCHAN.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

JOHN B. BUCHAN, of full age, being duly sworn according to law, upon his oath, says:

I have read the affidavit of George J. Mashek, verified the twentieth day of May, 1922, and read in support of the application for a receiver herein.

I am a mechanical engineer and have been in the employ of the defendant for the past six months. I

am fully familiar with the mechanical construction of the defendant's plant and I have already submitted an affidavit herein, verified the seventeenth day of May, 1922.

I have read the statement in said affidavit of Mashek that a number of machines have been allowed to run down so that many parts are in such condition that they are liable to break almost any time causing numerous delays. This is not a fact. While some minor repairs and replacements, such as are constantly recurring in any plant, are necessary, the plant is in first class condition and operates efficiently.

It operated for ten days, from April 26, 1922, to May 6, 1922, without breakdown and is in condition to continue to do so.

The statement is made in the affidavit that some of the machines have been so badly neglected, especially the mixer, that parts are missing making it impossible to make a good mixture. The present blades of the mixer are worn and require replacement, but this is a very small matter and has nothing to do whatever with the efficient operation of the plant as these blades are easily replaceable.

With respect to the statements contained in Mashek's affidavit as to the briquettes now turned out being the same in quality as were turned out at the time that the plant was first erected, I beg to submit, attached hereto, a report which I made concerning the briquettes and the manner in which they burn, made at different dates. This report speaks for itself and shows a constant and steady improvement of the product until a practically perfect briquette is now turned out, as against those made in prior months before the various improvements in the plant had been made. That said schedule was prepared and said tests made on the ninth day of May, 1922, and the said schedule

is annexed hereto and marked "Exhibit A," and made a part hereof.

That deponent personally knows that constant improvements have been made in the plant since his employment began as an efficiency engineer, and I have been continuously making changes in the plant to bring it up to its present state of efficiency.

JOHN B. BUCHAN.

Sworn and subscribed to before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

"EXHIBIT A"

May 9th, 1922

Experiments made with the object of comparing various briquettes against Anthracite coal  
**Furnace used.** Usual type of pot stove.

**Method employed.** In every case the fire was started at 9 A. M. with an equal weight of burning embers taken from the boiler fires and 30 lbs. of fuel was used in each case and placed at once on the embers.

Fuel	Smoke Lasted	State of Fire at 5 P. M.	Fuel After Burning	REMARKS
Anthracite	20 min.	Bright	Ashes 7 some clinkers	Light blue smoke smelling of partially consumed volatile matter.
Stove coal	35 "	Dull	Massed ashes	At first dense black smoke of a tarry odor which lasted for 10 minutes and then gradually became less.
Lehigh Valley	25 "	Dull	Massed ashes	Dense black smoke settling down to amber color.
International	20 "	Dull	Massed ashes & clinkers	<b>Made in Nov. 1921.</b> A little black smoke turning to deep yellow with strong sulphurous odor.
Briquettes	20 "	"	"	<b>Made April 1921.</b> A little black smoke smelling strongly of hydrocarbons which gave way to very strong sulphur fumes. The briquettes did not burn entirely through.
Briquettes	18 "	Dull Red	"	<b>Made in Jan. 1922.</b> No black smoke, but yellow fumes smelling slightly of sulphur gases. The briquettes did not burn entirely through.
Burnrite	12 "	Red	Fine ash no clinkers	<b>Made in March 1922.</b> No black smoke or yellow fumes. Smoke perfectly white and smelled slightly like burning straw. Briquettes burned right through.
A.	10 "	Bright	Fine ash no clinkers	<b>Made in April 1922.</b> Perfectly white smoke and perfectly odorless. As soon as fire was started, a quantity of white smoke came off, which began to slacken after 4 minutes and in 10 minutes had completely died away. The briquettes burned right through.

**Note:**—Samples C. D. E. were samples taken from the sale bin.

JOHN B. BUCHAN.

## AFFIDAVIT OF HARRY STACKELL.

STATE OF NEW YORK, }  
CITY OF NEW YORK, } ss.:  
COUNTY OF NEW YORK, }

HARRY STACKELL, being of full age and being first duly sworn doth depose and say:

I am an attorney and counselor-at-law, duly admitted to practice in the State of New York, and my office is at No. 217 Broadway, Borough of Manhattan, City, County and State of New York.

I am one of the directors of the Burnrite Coal Briquette Company, the defendant in the action above entitled.

I was nominated as a director by Mr. Joseph L. Smith, the attorney for the plaintiff in this action who, I am informed, nominated me, acting under a proxy for the plaintiff in this action.

I am also the owner of two thousand (2000) shares of the common stock of the company.

I am not sufficiently acquainted with the coal briquette business to express an opinion of any great value regarding the questions raised about the efficiency of the plants or the quality of the coal briquettes produced.

I am informed and verily believe that the highest grade of briquette manufactured in this country is turned out by the plant owned by the company.

I am, however, convinced that the only salvation of the defendant company lies in continuing its present management and in ousting the receivers. There is no doubt in mind that the only effect of receivership will be liquidation, which will wipe out the stockholders of the company and the very substantial sums that they have invested in this project.

Mr. Crossman, the president of the company, has assured me that he will make advances to the company as it requires.

Besides this the coal strike makes it highly inadvisable to interfere in any way with the operations of the company at this time; I am informed that the entire output for the ensuing year can be sold.

I have spoken to several large stockholders, and they agree that it would be a calamity for the company to permit the receivers to remain if they can possibly avoid it.

**HARRY STACKELL.**

Sworn to before me this third day of June, 1922.

**MAY SARNOFF,**

*Commissioner of Deeds*

*New York City.*

New York County Clerk's No. 291,

Commission expires May 31, 1922.

## AFFIDAVIT OF JOSEPH MAURER.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

JOSEPH MAURER, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 300 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

JOSEPH MAURER.

Sworn to and subscribed before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*



AFFIDAVIT OF ALBERT MARTIN.

STATE OF NEW JERSEY, }  
COUNTY OF               } ss.:

ALBERT MARTIN, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 4000 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

ALBERT MARTIN.

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,  
*Notary Public*  
*New Jersey.*

(Seal)

## AFFIDAVIT OF JAMES G. SANDERS.

STATE OF NEW JERSEY, } ss.:  
COUNTY OF }

JAMES G. SANDERS, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 700 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

JAMES G. SANDERS.

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,  
*Notary Public*  
*New Jersey.*

(Seal)

AFFIDAVIT OF PETER EELMAN.

STATE OF NEW JERSEY, }  
COUNTY OF BERGEN, } ss.:

PETER EELMAN, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 450 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

PETER EELMAN.

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,  
Notary Public  
New Jersey.

(Seal)

## AFFIDAVIT OF JOSEPH B. THOMAS.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss.:

JOSEPH B. THOMAS, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and that Benjamin Thomas Jr., is a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

Benjamin Thomas, Jr., owns 2000 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

JOSEPH B. THOMAS,

*Attorney.*

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,

*Notary Public*

*New Jersey.*

(Seal)

AFFIDAVIT OF ABRAHAM VAN DER VLEIT.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss.:

ABRAHAM VAN DER VLEIT, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 2000 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

ABRAHAM VAN DER VLEIT.

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,  
Notary Public  
New Jersey.

(Seal)

## AFFIDAVIT OF I. SERLINSKY.

STATE OF NEW JERSEY, {  
COUNTY OF PASSAIC, { ss.:

I. SERLINSKY, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 272 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

I. SERLINSKY.

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,  
*Notary Public*  
*New Jersey.*

(Seal)

AFFIDAVIT OF ISAAC NOONBURG.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss.:

Isaac Noonburg, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 1000 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

ISAAC NOONBURG.

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,  
*Notary Public*  
*New Jersey.*

(Seal)

## AFFIDAVIT OF ANTON STEINES.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

Anton Steines, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 1200 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

ANTON STEINES.

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,

*Notary Public*

*New Jersey.*

(Seal)



AFFIDAVIT OF ABRAM E. HOPPER.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss.:

Abram E. Hopper, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 1000 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of the next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years, and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

ABRAM E. HOPPER.

Sworn to and subscribed before me this third day of June, 1922.

JOHN P. LUX,  
Notary Public  
New Jersey.

(Seal)

## AFFIDAVIT OF HENRY ETLING.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

Henry Etling, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 1750 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

HENRY ETLING.

Sworn to and subscribed before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

AFFIDAVIT OF J. FRANK DONOVAN.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

J. Frank Donovan, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 400 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

J. FRANK DONOVAN.

Sworn to and subscribed before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF CARL RAUBENHEIMER.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

Carl Raubenheimer, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 800 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

CARL RAUBENHEIMER.

Sworn to and subscribed before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

AFFIDAVIT OF FREDERICK A. MERKLUGER.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

Frederick A. Merkluger, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholders in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 800 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

FREDERICK A. MERKLUGER.

Sworn to and subscribed before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF EVA E. DESCH.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

Eva E. Desch, of full age, being duly sworn according to law, upon her oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 200 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

EVA E. DESCH.

Sworn to and subscribed before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

AFFIDAVIT OF JOHN DESCH.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

JOHN DESCH, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 1550 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

JOHN DESCH.

Sworn to and subscribed before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF MARY L. DAVIS.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

MARY L. DAVIS, of full age, being duly sworn according to law, upon her oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 1100 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

MARY L. DAVIS.

Sworn and subscribed to before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*



AFFIDAVIT OF CLARA F. TURNBULL.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

CLARA F. TURNBULL, of full age, being duly sworn according to law, upon her oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 100 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

CLARA F. TURNBULL.

Sworn and subscribed to before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF SARAH M. EDWARDS.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

SARAH M. EDWARDS, of full age, being duly sworn according to law, upon her oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 1000 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

SARAH M. EDWARDS, M. D.

Sworn and subscribed to before me, this            day  
of June, 1922.

**AFFIDAVIT OF SALLIE A. PFEFFER.**

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

SALLIE A. PFEFFER, of full age, being duly sworn according to law, upon her oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 75 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

**SALLIE A. PFEFFER.**

Sworn and subscribed to before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF MAX LANGER.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

MAX LANGER, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 75 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

MAX LANGER.

Sworn and subscribed to before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

AFFIDAVIT OF EMMA AUTZ.

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX,

EMMA AUTZ, of full age, being duly sworn according to law, upon her oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 100 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

EMMA AUTZ.

Sworn and subscribed to before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF JULIUS VOGELER.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

JULIUS VOGELER, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 1600 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

JULIUS C. VOGELER.

Sworn and subscribed to before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

AFFIDAVIT OF FRANK E. COLLINS.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

Frank E. Collins, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 1175 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

FRANK E. COLLINS.

Sworn and subscribed to before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF CHRISTIAN LUTZ.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

Christian Lutz, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 8000 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

CHRISTIAN LUTZ.

Sworn and subscribed to before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*



AFFIDAVIT OF HENRY C. RODEMANN.

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

Henry C. Rodemann, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 36,000 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

HENRY C. RODEMANN.

Sworn and subscribed to before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF HERMAN F. BEHRENDT.

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

Herman F. Behrendt, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 3000 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

HERMAN F. BEHRENDT.

Sworn and subscribed to before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

AFFIDAVIT OF PHOEBE S. ROTH.

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

Phoebe S. Roth, of full age, being duly sworn according to law, upon her oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 5000 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

P. S. ROTH.

Sworn and subscribed to before me this third day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

## AFFIDAVIT OF GEORGE LEHBERGER.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

George Lehberger, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 4000 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

GEORGE LEHBERGER.

Sworn and subscribed to before me this fourth day of June, 1922.

HERMAN ROTH,  
*Attorney-at-Law*  
*of New Jersey.*

**AFFIDAVIT OF ADAM GLUTTING.**

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

Adam Glutting, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 10,000 shares of the stock of said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

**ADAM GLUTTING.**

Sworn and subscribed to before me this fifth day of June, 1922.

CLYDE C. OAKLEY,  
(Seal) *Notary Public*  
*of New Jersey.*

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## REPLY AFFIDAVITS ON BEHALF OF DEFENDANT.

(Filed June 19, 1922.)

## AFFIDAVIT OF HENRY C. RODEMANN.

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

Henry C. Rodemann, being duly sworn, upon his oath deposes and says:

On June 9, 1922, I attended the meeting referred to in the affidavit of Alfred Stahl, of some of the stockholders of the Burnrite Coal Briquette Company, called for the purpose of organizing a protective association. At said meeting the first thing done was the reading of a circular, a copy of which is hereto annexed and made part hereof, marked Schedule A. This circular is untrue and misleading in several important particulars. In the first place it is stated that it was alleged in these proceedings that during the year 1921 the company lost nearly \$50,000, without making any allowance for depreciation whatever. This is absolutely untrue because the alleged loss was not in fact suffered, but it was explained in the proceedings that the plant of the company was in process of construction and improvement during the year 1921, the charge of which was carried on the company's books as an operating expense, and that that could be readily discovered from an examination of the company's books and paid bill vouchers. It is further, in said circular, stated that during the year 1922, up to May 15, the company lost \$14,000 without depreciation charges. This is likewise untrue. This alleged loss does not take into consideration the correct inventory of the company's assets and merchandise on hand, as was admitted to me by Mr. Buchan, the company's engineer

who compiled the figures for the receivers because the said receivers made an error in their multiplication. The statement in said circular further fails to take into account the fact that the plant was actually operated for thirty-seven days during the period from January 1 to May 6, 1922. The said circular is further untruthful and misleading in that it states that it appeared that the Burnrite Coal Briquette Company is intertwined with other corporations using the name "Burnrite," which made profits at its expense. The affidavits submitted by the defendant clearly show that this is a false and untruthful statement. The illustration of the said company having sold to the Burnrite Securities Company its shares and the latter company having sold the same at a profit on the market, is plainly calculated to create hostility on the part of the stockholders to the defendant company and its officers and directors when none of the company's officers or directors had directly or indirectly any interest in the Burnrite Securities Company. The books of the defendant company have been in the possession of the receivers and of their counsel since the date of their appointment and we have not had access thereto, and although the said receivers had employed accountants to examine the company's books and a thorough examination of them has been made, no definite single transaction has been pointed out in which the company or any of its officers can be charged with wrongdoing. The said meeting first above referred to herein was attended by Mr. Joseph L. Smith, solicitor of the complainant, and I was asked to make a statement relative to the finances of the company. In response to said request I did not state, as set forth in the affidavit of Alfred Stahl, that there was an operating loss for the year 1921 of approximately \$42,000, and that there was an operating loss from January 1, 1922, to May 11, 1922, of approximately \$7000. What I did state was

that, as far as the bookkeeping of the company was concerned, and I read this from the company's auditor's report, the books would ostensibly show such losses and I began to explain and go into detail to show that these items were not losses at all, but included the items paid by the company in even greater amounts for construction and improvements, when I was not permitted to speak further, and ordered to stop when I desired to explain to those present the true and actual situation.

In the latter part of the year 1918 the issuance of stock by private corporations in excess of \$100,000 was prohibited by the United States Capital Issues Committee for the purpose of confining investors as far as possible in the purchase of Government War Securities, and it was for that reason and in order to satisfy purchasers of our company's stock that Mr. Crossman volunteered to temporarily have transferred to such purchasers, shares of the stock owned by him in our company, for which, however, the purchaser transferee paid directly to the company, as will appear on the company's records. None of Mr. Crossman's stock, however, as aforesaid, was transferred before October 29, 1918.

All of the acts of the company's officers and directors were discussed at the annual meeting of the stockholders held in May, 1921, and all of such acts and dealings were expressly ratified and confirmed. In fact, Mr. Joseph L. Smith, solicitor of complainant, appeared as complainant's proxy and also acquiesced in the company's management, and the company's books and records were then and there opened for examination or investigation by any stockholder. This meeting was attended by over one hundred and fifty of the company's stockholders in person, and approximately one hundred thousand shares of the company's stock was represented by proxy. None of Mr. Crossman's



stock was voted at this or any other stockholders' meeting.

On page 110 of the affidavit of Mr. Kirby, it is stated: "The accountant's report submitted shows that actual items of expense are carried on the books as deferred and intangible assets." This criticism shows how little the affiant is familiar with bookkeeping. Of the items to which he refers, there is one of \$57,000, paid by us for commission on the sale of stock which is an expense of raising capital. The same is true of organization expense, and these items cannot be properly charged and are not chargeable to expense of operation. In fact, these items were charged on the company's books long before the plant was erected and before any of the stock was sold to brokers. On said page of said affidavit it is further stated that the company's accountants show operating loss for the year 1920 amounting to approximately \$70,000. This is likewise a bookkeeping method, for the company was not in operation in the year 1920 and was then merely in the course of construction. The other items of alleged loss have heretofore been explained in like manner.

As to the agreement referred to on page 106 of Mr. Kirby's affidavit made between the company and Mr. Crossman on July 29, 1919, for the payment to him, said Crossman, of royalties, it is expressly therein stated that that was to be in lieu of all salary payable to him, and as before stated, during all of the time of his service of the company, has earned approximately \$5000, which is carried on its books. Furthermore, this contract was expressly ratified at the stockholders' meeting held in May, 1921. So was the issue of stock referred to on the same page of Mr. Kirby's affidavit authorized at the directors' meeting held September 3, 1919. In fact, all of the matters that had taken place

before said meeting were taken up at the said annual stockholders' meeting, discussed, explained and approved. Mr. Lucking knew all about these transactions and was familiar with the recitals contained in the company's minutes, and it was therefore unnecessary and in fact there was not time to read the minutes at the meeting held November 25, 1919, referred to on page 107 of Mr. Kirby's affidavit.

It is untrue, as stated on page 109 of Mr. Kirby's affidavit, that the plant had been shut down for at least two weeks prior to his appointment. As a matter of fact the plant was in actual operation until Saturday, May 6th, which is only a few days before the day of his appointment as receiver herein.

With reference to the statement on page 109 of Mr. Kirby's affidavit that there was only \$10,000 of insurance on the plant, the true situation is as follows: We had ordered a re-survey to be made of the plant in order that the rate on fire insurance policies should be reduced. We ordered a policy covering the plant, for \$100,000, and there is a letter in the files of the company from Simpson & Company, of Philadelphia, insurance brokers, to the effect that they have placed a binder of \$100,000 of insurance on the plant pending the re-survey, and that formal policy would be issued as soon as the survey is completed. The premiums on the \$10,000 fire insurance policy were paid. In fact, I believe there was more insurance than \$10,000 on the plant, the premiums on all of which policies were paid. With reference to the liability insurance the premiums on that have been substantially paid, and if there is any balance remaining unpaid thereon, it is on the small insignificant sum. I am informed that there was a small balance due for the payment of which a check had been drawn, signed and ready to be mailed, when the receivers took possession.

*Schedule A to Affidavit of H. C. Rodemann* 191

We were also about to pay the premium on the pay roll hold-up insurance, all of which is about \$12. It is not true, however, as stated by Mr. Kirby, that any of our insurance was about to be cancelled.

HENRY C. RODEMANN.

Sworn and subscribed to before me this fifteenth day of June, 1922.

CHAS. HERSHENSTEIN,  
*Master-in-Chancery,*  
*of New Jersey.*

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SCHEDULE A.

Chairman  
C. P. Montrastelle

Vice-Chairmen  
C. Hutson, Plainfield  
C. C. Kraemer, Linden

Secretary  
H. J. Sievers, Elizabeth  
Treasurer  
W. D. Manning, Plainfield

BURNRITE STOCKHOLDERS PROTECTIVE ASSOC'N  
827 Pearl Street  
ELIZABETH, N. J.  
Phone 4400

June 1922.

*To the Stockholders of the Burnrite Coal Briquette Co.*

You are doubtless aware of the appointment of Receivers for the Burnrite Coal Briquette Company by the United States District Court. In the proceedings it was alleged that during the year 1921 the Company lost nearly \$50,000.00 without making any allowance for depreciation whatever, and that during the year 1922, up to May 15th, the Company lost \$14,000.00 without depreciation charges. It also appeared that the Burnrite Coal Briquette Company is intertwined with other corporations using the name "Burnrite,"

which made profits at its expense. For instance: The Burnrite Securities Company paid to the Burnrite Coal Briquette Company seventy-five and eighty cents for shares which in turn were sold by it to stockholders for two, three, and even five dollars per share. The stockholders of the Burnrite Securities Company made this profit at the expense of your Company. It appeared also that the Burnrite Coal Briquette Company, instead of buying direct, coal dust used by it, purchased this raw material through another corporation which made a profit on the transaction of twenty-five or thirty cents per ton.

These are just a few of the salient facts which caused several of the stockholders of the company to organize the Burnrite Stockholders Protective Association.

The object of the Association is to investigate the financial affairs of the Company and if there has been wrongdoing, to fasten the guilt upon those responsible for it, and conserve, protect and further the interests of the stockholders by bringing about a liquidation or re-organization of the corporation, as may seem wise.

The officers of the Association are:

Chairman, G. P. MONSTRATELLE, New Brunswick, N. J.

Vice-Chairman, C. HUTSON, Westfield, N. J.—C. C. KRAEMER, Linden, N. J.

Secretary, H. J. SIEVERS, Elizabeth, N. J.

Treasurer, W. D. MANNING, Plainfield, N. J.

Counsel, RUSSELL E. WATSON, New Brunswick, N. J.

The Board of Directors consist of the Officers above named, together with:

FELIX MARX, Elizabeth, N. J.

PETER SKOBLE, Perth Amboy, N. J.

JOHN BIGOS, Perth Amboy, N. J.

CARL WILL, Roselle Park, N. J.

H. J. LUSARDI, Cranford, N. J.

FRED. BAUER, Rahway and Cateret, N. J.

L. A. HOWELL, New Brunswick, N. J.

P. A. PETERSON, Asbury Park, N. J.

In continuing the work of organization of the Association it is proposed that the stockholders of each community shall have a representative upon the Board. Only shareholders who have paid cash for shares are eligible for membership. Each member will be assessed One per cent. of the amount which he paid for his shares.

The Directors of the Association have kept in touch with the litigation thus far, and they are of the opinion that the stockholders of the corporation ought to organize for the protection of their interests, wherefore they have taken the initiative in the matter. They ask that you become a member of the association by signing the enclosed blank, and that you forward it, together with your assessment to the extent of one per cent. of the amount that you paid for your shares to W. T. Manning, Treasurer, 210 W. Third Street, Plainfield.

Yours very truly,

H. J. SIEVERS,

*Secretary.*

.....  
Tear off and mail to W. D. Manning, Treas., 210 W.  
3rd St., Plainfield, N. J.

I, ..... of .....  
do hereby become a member of the Burnrite Stock-  
holders Protective Association. I am the holder of ....  
shares of preferred stock and ..... shares of com-

mon stock of the Burnrite Coal Briquette Company, for which I paid \$. . . . .

Enclosed herewith find . . . . . for \$. . . . . my membership assessment. It is understood that I shall be liable to no further assessment whatever.

Dated June . . . . ., 1922.

.....

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### AFFIDAVIT OF JOHN B. BUCHAN.

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STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

John B. Buchan, being duly sworn on his oath, deposes and says:

Before coming into the employ of the Burnrite Coal Briquette Company, the above-named defendant, I had never been engaged in the coal briquetting business and never owned a coal briquetting plant of my own, nor had I any process for the manufacturing of coal briquettes. The briquetting plant I had was situated in San Carlos, Republic of Uruguay, and was for the converting of lignite into briquettes and as a binder used the tar from the carbonization process and the pitch resulting from the distillation of the tar. Such binder was not used in the manufacture of coal briquettes by defendant. Any improvement that I might have made in the Crossman process is the property of the Burnrite Coal Briquette Company. In fact, no improvement was made in the Crossman binder. I never suggested to Mr. Yorston that he enter into an agreement with me in reference to any formula. As a matter of fact it was Mr. Yorston who suggested it to me and persuaded me to enter into an agreement with him with reference to a for-

mula for coal briquetting, using the ingredients which were used in the plant of the above defendant company. The agreement was suggested solely by Mr. Yorston and drawn up by his lawyer. Mr. Yorston and I developed no formula, as Mr. Yorston was not experienced in the manufacture of coal briquettes.

On May 8th I made a very careful survey of the plant of defendant to ascertain the total cost of putting the plant in condition for continuous running. As I had had full charge of the plant I knew thoroughly its weak points and defects and calculate that for the sum of \$1500 I could do the work of putting the plant in fine condition. If the new addition I suggested were added, to enable the plant to work more efficiently as well as more economically, the total cost could not exceed \$3000. These additions would be entirely new features to any briquetting plant.

The plant closed down at 12 noon on May 6, 1922, having run ten consecutive days. The reason for the close-down was the delay in the delivery of the car of starch, which was held up by the interruption on the railroad up country, due to floods.

JOHN B. BUCHAN.

Sworn and subscribed to before me this thirteenth day of June, 1922.

JOHN SPERBER,  
(Seal) *Notary Public.*  
My commission expires  
May 4, 1924.

**AFFIDAVIT OF FRANCIS M. CROSSMAN.**

STATE OF NEW JERSEY, } ss.:  
COUNTY OF HUDSON, }

FRANCIS M. CROSSMAN, being duly sworn on his oath, deposes and says:

It is not true, as stated in the affidavit of Francis M. Yorston, made on June 10, 1922, that Mr. Dwight G. Johnson had abandoned the idea of selling our bonds immediately after the meeting of April 11, 1922. Mr. Johnson was in repeated communication with me and visited me frequently after said date with a view of arranging for the sale of these bonds. I never stated that I would not advance any further moneys to the defendant company, as stated by Mr. Yorston in his said affidavit. As a matter of fact I have repeatedly declared my willingness to advance necessary moneys at all times, and in fact have done so without accepting any security in the first instance from the company therefor.

Neither is it true, as stated in the affidavit of Mr. Yorston, that Mr. Buchan, the company's engineer, had developed any formula for the manufacture of briquettes or that he had ever had an anthracite coal briquetting plant. The fact being that Mr. Buchan never was in the anthracite coal briquetting business before coming with our company. Neither is it true, as stated in the affidavit of Mr. Yorston, that our formula was improved upon by him. As a matter of fact Mr. Yorston knows nothing about the business of manufacturing coal briquettes, nor does he know anything about coal, because he had never been in that line of business before coming to us as our secretary.

In reference to the property at Perth Amboy, purchased by the Burnrite Coal Briquette Company of



New Jersey from me at \$100,000, referred to in the affidavit of Mr. Yorston; this property has nothing whatever to do with this litigation, nor is it, as I am advised, directly or indirectly involved in this case. In order, however, to answer the allegations of Mr. Yorston's affidavit in that respect, I state that it is true that the original purchase price paid by me for this property was \$68,500. This property was held by me without producing any revenue for about three years before I contracted to turn it over to the said New Jersey company, so that interest on said purchase price at the legal rate would amount to a considerable sum alone. I further paid engineering expenses, legal fees, and acquired riparian rights for this property, which brought the total cost thereof to me up to somewhat over \$98,000. This does not include any compensation to me for my trouble and incidental disbursements in handling the property. I estimate that the actual cost to me was fully \$100,000, at which price I contracted to turn it over to the New Jersey corporation.

With reference to the property upon which a small mortgage of \$2350 is being foreclosed and heretofore referred to, I state that I left it to Mr. Yorston to arrange for an extension of time of the payment of this mortgage, and that he afterwards informed me that after considerable negotiations with the mortgagee, he had succeeded in obtaining an extension. When, much to my surprise, we were served with papers in a foreclosure suit, I communicated these facts to our counsel, Mr. Roth. The property covered by this mortgage is of very little value and is merely used by the company as a dumping ground for its ashes, and is not in any way essential for the conduct of the company's business.

The dealings, shown by the newspaper records, in the stock of the defendant, were transactions in which

none of the officers of the company had any interest. We had sold about twenty thousand (20,000) shares of common stock to one Samuel H. Osterweil, a stock broker in New York who manipulated the market, or through others caused it to be manipulated in various transactions, indicated by the newspaper reports; as a matter of fact, when we learned of this, we refused to sell him any more stock. Although there were certificates issued to me during the months of August and September, 1918, aggregating in all about thirteen thousand (13,000) shares of common stock, none of these were transferred by me until October 29th, when I made the first transfer of any of my holdings in the said company to a Mr. Winters, a brewer, of five thousand (5000) shares, for which he paid cash to the defendant company direct. This was accompanied also by a purchase by Mr. Winters of five thousand (5000) shares of preferred stock issued directly from the company. I never permitted any of my stock to be manipulated on the market; in fact, until the latter part of 1919 or early part of 1920 whenever a transfer of stock was made from me it went through the books of the company, and the company received the consideration for said sale. The reason why stock standing in my name was so transferred to said Winters and others who had subscribed for stock in the company, was because the United States Capital Issues Committee (which had been formed to prevent stock issues which would unduly interfere with the sale of Government War Securities) would not permit the issuance of stock in excess of \$100,000 pending a hearing before it. In order to overcome this obstacle I voluntarily permitted the transfer of stock standing in my name to subscribers of our stock who had theretofore subscribed and paid in part for it. The transfers were made when the full purchase price was paid to the company.

In the affidavit of Alfred L. Kirby, verified June 10, 1922, reference is made to a letter written by me dated October 17, 1918, addressed to Hon. J. Gordon Battle. Mr. Battle represented the company on an application made by it to said Capital Issues Committee for permission to issue further securities, and said letter, when read in its entirety, indicates quite clearly that what I wrote therein was by way of a history of my activities in attempting to establish a coal briquetting industry and the value of such industry. Annexed to said letter will also be found newspaper clippings as well as statistics showing that we had no connection whatever with the curb or stock market transactions. The paragraph of said letter referred to in Mr. Kirby's affidavit has nothing whatever to do with the *defendant* company. It refers to a company organized in Delaware in 1917, known as the Burnrite Coal *Briquetting* Company, which I truthfully stated to Mr. Battle, in said paragraph of said letter, that I owned and controlled. The business of said company had nothing whatever to do with the defendant corporation, and when I, or counsel for the company, on June 5, 1922, in court stated that I only owned 33 per cent. of its stock, the statement was directed to my ownership in the *defendant* company.

It is stated in the affidavit of Mr. Kirby that from the letters therein referred, it is evident that I was dependent almost entirely upon Mr. Mashek for information pertaining to the briquetting industry. A reading of all of these letters in their entirety, I am confident, will show that Mr. Mashek knew that I expected to use formulae of my own. Particular reference to the beginning of his letter addressed to me, dated July 20, 1917, will satisfactorily show that; which letter, however, was never received by me. The fact that in all subsequent letters no reference what-

ever is made of this one will demonstrate that all of our negotiations were with reference to my binder, and no reference whatever is made either by me or Mr. Mashek to the said alleged letter of July 20, 1917. I have made a thorough study of the various binders used, and sought to obtain from others and from Mr. Mashek information pertaining to the briquetting industry, that is as to what formulæ were being satisfactorily operated under, using machinery which Mr. Mashek was producing. I was given to understand first by Mr. Levinson and several years subsequently by Mr. Mashek that formulæ were in use under which I could operate and produce satisfactory briquettes more economically than under my formulæ. The briquettes that I requested be sent to me so manufactured under other processes, I desired to have so that they might be tested and compared with the process that I had. Mr. Mashek subsequently advised me, after I had learned of this myself, that Levinson was unreliable, and Mr. Mashek sought to tell me how my formula might be used, which information I, however, did not require or ask for. After this thorough investigation I concluded that my formula was the only one under which I cared to operate, and that it was superior in every respect to others of which I had learned and that the same was not in any way infringing upon any existing or known formula. Our company did not operate under any formula other than the one which I had approved and which had been formulated by me.

I annex hereto a copy of a letter received by me from Mr. Mashek, dated July 28, 1917, which refutes any idea that Mr. Mashek even considered that he gave me any formula in his letter of July 20, 1917. I also annex hereto a copy of a letter written to me by Mr. Mashek, dated July 26, 1917, from which it appears: "He told me that his binder would cost considerable

more than 70 cents a ton, which I told him would be about the cost of *your binder that you contemplate using.*" All I needed Mr. Mashek for was to give us the machinery, and it is not true, as stated on page 102 of Mr. Kirby's affidavit: "In none of this early correspondence does Crossman mention his own secret binder formula and process." In fact, all through the correspondence Mashek refers to my formula. It is true, as stated in Mr. Kirby's affidavit, that briquette binder formulæ are printed in textbooks, etc., but it is also true that nowhere can there be found any record of any formula containing the combinations used by us in our binder, and nowhere in the world is such combination of ingredients used.

With reference to the salesman's information binder issued by the Burnrite Coal Securities Corporation, referred to in Mr. Kirby's affidavit, it is true that I signed the first page of said binder prohibiting any misrepresentations to the investing public. This was a sales binder used by the Briquette Coal Securities Company of New Jersey, in which neither I nor any member of my family were directly or indirectly interested. It was a loose leaf sales binder, and whether any loose leaf was thereafter inserted containing the statements alleged in Mr. Kirby's affidavit I have no knowledge, and if such was inserted it was without any authority on my part directly or indirectly, as I had nothing whatever to do with the said Burnrite Coal Securities Company of New Jersey. That company might have inserted in said loose leaf binder any misleading information they desired and we had absolutely no control over it, as they had no connection whatever with our company but were engaged in the business of purchasing and dealing in stock from brokers. It is untrue that Mr. Herman E. S. Chayes ever purchased any stock in our company at my request to support the market.

It is untrue that the Burnrite Coal Securities Company of New Jersey was a subsidiary company of the Burnrite Coal Securities Corporation. None of the companies mentioned in subdivisions numbered 1, 3, 4, 5, 6, 7, 8 and 10 on pages 104 and 105 of Kirby's affidavit are in any way subsidiary or affiliated with the defendant company as Mr. Kirby states in his affidavit by way of information from Bradstreet Company, nor is it competent evidence.

It is true, as stated in Mr. Kirby's affidavit, that at the directors' meeting held January 22, 1919, 25,000 shares of common stock were ordered to be issued to Nat Chayes for his services in negotiating the contracts with Ellis & Lewin. This was regarded as a proper compensation and was approved by the board of directors of the company. I was only vice-president at that time and had no personal interest whatever in said transaction.

It is true that I was to receive the royalties agreed to be paid under the contract made July 29, 1919, referred to on page 106 of Mr. Kirby's affidavit, in lieu of all salary. I have already explained that all that has thus far accrued to me under this contract was approximately \$5000; that I have not been paid the \$250 weekly payments to be applied on account of my royalty, as provided for in said contract, nor any part thereof, and that the stockholders of the company, as well as the officers and directors thereof, entered into this contract with me at arms' length, and nothing whatever was concealed, and that I feel that I am entitled at least to this nominal consideration for the many years' labor and the large expenditures of money made by me in the perfecting of this formula and for the services which I have rendered to the company during its construction and subsequent period when a great deal of my time and labor were given

up to make the business a success. Whether any briquettes were produced or not, my compensation was dependent entirely upon production and sales. It is not true, as stated on page 108 in the affidavit of Mr. Kirby, that Mr. Kennedy resigned because of the proposition of the Burnrite Coal Briquette Company of New Jersey. Mr. Kennedy resigned because he found that he could not spare the necessary time required in the company's service and his letter of resignation which is in Mr. Kirby's hands, as receiver of the defendant company, will show that that is the only reason for his resignation. Mr. Kirby has failed to submit with the other copies of letters attached to his affidavit, a copy of Mr. Kennedy's resignation.

To show the malevolence of the said Kirby toward me, he states on page 100 of his affidavit that prior to the year 1919 I was engaged in various enterprises, such as the sale of silk, millinery, corsets, whiskey and perfume, all far removed from briquetting and fuel in general. This statement is absolutely false. I never was engaged in the sale of silk, millinery, corsets, whiskey or perfume, or any of its kindred lines, excepting that in 1907, for a period of about six months, I was engaged as a special representative of an alcohol manufacturing concern in the sale of alcohol during said short period of time, for fuel and other purposes.

FRANCIS M. CROSSMAN.

Sworn and subscribed to before me this nineteenth day of June, 1922.

(Seal)

GROVER J. CAREY,  
*Notary Public*  
*of New Jersey.*

MASHEK ENGINEERING CO.

90 West St.,

(#20)

New York City.

July 28, 1917.

Mr. F. M. Crossman,  
Bakewell Building,  
Pittsburgh, Pa.

Dear Sir:

Have received your two letters of the 27th and note contents.

Have found out from the Vulcan Iron Works that they are not building, and, in fact, do not expect to build, any machinery for anyone in New York. They have had an inquiry and replied to it that if the people tell them what they will want, they will build it at their own risk, to which no answer had been received.

In further conversation with Mr. Van Pelt, he states that their binder is dry form, only 2% of it is necessary, that it is all carbon, a secret, and that they can make it at so much less than anyone else that there is no danger of competition. This is what Mr. Levinson has been claiming for two or three years past.

If this is the same thing, possibly Mr. Levinson put the idea into their head. They might in some way have helped him to perfect it and undoubtedly made some arrangements with him to pay him, but they could not have promised him much as their corporation is very small. There is not much danger of the Bloomingdale brothers putting up money on an untried thing like this; they are very shrewd and have been burnt several times.

As you have a contract with Mr. Levinson, it would not be difficult if they should make any headway, to get an injunction and have Mr. Levinson turn over the thing to you for the same price which he agreed on to turn it over to them. This agreement



with them would fix the price and he could not name an impossible figure to you if he entered into a contract with anyone else at a much lower figure.

They admit that it will cost them about \$35.00 a ton. This is the same price that the Gum Products Company make on dried sulphite pitch waterproofed with resin. In view of these facts, they have nothing. Anyone can make dry sulphite pitch in the old method by vacuum distillation and it really costs only \$20.00 to produce a ton—the rest is all expense and profit—which does not make it any cheaper than sulphite pitch with 50% water.

I have inquired about Mr. Van Pelt, who seems to be the prime mover in the thing. They are now negotiating to get a culm bank. He has been a New York representative of the Eastern Pennsylvania Coal Co., a bituminous coal concern, but is not now. He is trying to make a living as a middle man in scalping; does not know much about the Anthracite business.

Believe Mr. Learned is in it only as a mechanical engineer, with the possibility of being able to get some new business for his company.

Will let you know what I find out Monday, and will also write you more fully on cost of ten ton per hour plant.

Yours very truly,

MASHEK ENGINEERING COMPANY.

Per G. J. MASHEK.

G. J. M. A.

MASHEK ENGINEERING CO.  
90 West St.,  
New York, N. Y.

July 26, 1917.

Mr. F. M. Crossman,  
Pittsburgh, Pa.

Dear Sir:

Received your letter this morning.

After trying to get in touch with Mr. Learbed since Monday and going to the office and always being told that he is not in, he finally sent a Mr. Van Pelt, who is in the coal business at #1 Broadway and who is one of their stockholders.

They tell me the same story about binder that they told you. It is evident that Mr. Van Pelt does not understand the briquet business, or any of the others who are with him. He told me that his binder would cost considerably more than 70¢ a ton, which I told him would be about the cost of your binder that you contemplate using.

This man does know Levinson and seems to know all about his work. There is no doubt but that it is sulphite pitch that they are using, with perhaps a little silica and an oil hardener. They mix it with water and they must bake the briquets.

They will not make any definite proposition at the present time to furnish the binder; except to put up their own plants; were advised to go to the Vulcan Iron Works for machinery, which is probably Levinson's instructions so that we would not get in touch with them.

They will send us additional briquets tomorrow to examine them, and want us to go and look over their small plant that they have in Long Island City to see what would be necessary to carry out their process.



complaint herein. Mr. Crossman, the president of said defendant corporation, who delivered to me the subpoena served in said foreclosure suit, informed me that Mr. Yorston, the secretary of the said company, at his direction had arranged with the mortgagees in said mortgage named, for an extension of time for the payment thereof in March of this year, when the interest was paid, which had then accrued; that this mortgage, according to its terms, had become due in September, 1921, and an extension had then also been obtained for the payment of the principal sum for six months, and that the later extension so obtained as aforesaid in March, 1922, was likewise agreed upon, in consideration that the said company agree to continue to pay the interest thereon at 6 per cent. and forbear the payment of the principal.

I thereupon advised Mr. Crossman that the said foreclosure suit was prematurely brought, and that the principal sum of said mortgage was then due, and I prepared an answer to the bill of complaint and filed the same. That under the authority of the case of *Measurall v. Pierce*, 4 Atl. Rep. 678, reversing 3 Atl. Rep. 92, the facts present a valid defense to said foreclosure suit.

HERMAN ROTH.

Sworn and subscribed to before me this fifteenth day of June, 1922.

ABR. I. SOLOMON,

*Commissioner of Deeds.*

City of New York.

Bronx Co. Clerk's No. 51

Bronx Co. Register's No. 3028

New York Co. Clerk's No. 279

New York Co. Register's No. 23122

Commission expires May 17, 1923.

REPLIES TO COMPLAINANT'S AFFIDAVITS  
SUBMITTED AT ORAL ARGUMENT.

(Filed June 19, 1922.)

AFFIDAVIT OF FRANCIS M. CROSSMAN.

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

Francis M. Crossman, of full age, being duly sworn according to law, on his oath says:

I am the same person who verified affidavits in this cause on the seventeenth day of May and third day of June, 1922. Since the said affidavits were subscribed and sworn to by me, my attention has been directed to two certain affidavits made by Francis M. Yorston on May 26 and June 5, 1922. I am replying thereto.

1. *The Burnrite Coal Briquette Company*.—It is true, as stated in Mr. Yorston's affidavit, that the company itself at first attempted to sell its common stock, offering one share of preferred for \$1 and one share of common as a bonus. As the company had no sales force and was not equipped to market a stock of the kind in question, it finally entered into an arrangement with Samuel Graubart, who had theretofore approached the officers of the company and stated that he was equipped to sell stock, whereby we sold the stock to Graubart at 70 cents a share for the preferred and 70 cents a share for the common, and he in turn was to sell the same for \$1 per share. He at first desired an exclusive option on the purchase of 100,000 shares. This we declined to give to him because we knew nothing about his capabilities. After he had operated under this arrangement for several months and had done quite well, it was determined to give

him an option to purchase 200,000 or 230,000 shares of common stock and 150,000 shares of preferred stock, this being, as I recall it, all of the stock then remaining in the treasury of the company. In order to properly handle the proposition, he deemed it advisable or necessary to form a corporation. He sought our permission to have this corporation bear the name "Burnrite." We finally agreed to permit him to use that name. He afterwards caused to be formed under the laws of the State of New York, I am informed, a corporation known as the "Burnrite Coal Securities Corporation." On the twenty-third day of May, 1919, pursuant to the verbal arrangements theretofore made, the Burnrite Coal Briquette Company, the defendant in this action, entered into a written contract with the Securities Corporation, which said contract provides as follows:

"1st. That the said Coal Company does hereby give, grant and set over unto the Securities Company an option to purchase 150,000 shares of preferred stock, and 200,000 shares of common stock. The purchase price of said stock, and which the Securities Company agrees to pay therefor, is as follows:

70¢ per share for preferred stock

80¢ per share for the first 50,000 shares of common stock

\$1.00 for the next 50,000 shares of common stock

\$1.25 for the next 50,000 shares of common stock

\$1.50 per share for the 50,000 shares of common stock.

"2nd. It is expressly agreed and understood that no stock shall be delivered until it shall have been paid for in cash or certified check to the Coal Company at the rates herein described.

"3rd. The Coal Company shall not be required to deliver hereunder more than four (4) shares of common stock to every share of pre-

ferred stock purchased by the said Securities Company.

"4th. It is expressly understood and agreed that this option shall cease and determine upon the failure of the said Securities Company to pay \$1,000 per week on account of purchase of stock. This option shall cease and determine upon the failure of the Securities Company to purchase 50,000 shares of stock before October 1st, 1919.

"5th. This option shall cease and determine upon the failure of the Securities Company to purchase additional 50,000 shares of stock between October 1st, 1919 and December 1st, 1919.

"6th. This option shall cease and determine upon the failure of the Securities Company to purchase additional 50,000 shares of stock between December 1st, 1919 and February 1st, 1920.

"7th. This option shall cease and determine upon the failure of the Securities Company to purchase additional 50,000 shares of stock before the 1st day of May, 1920.

"8th. It is expressly understood and agreed that upon any misrepresentations made by the said Securities Company or its agents, in the sale of the stock of the Coal Company, this contract shall cease and determine, excepting that the party of the second part shall have the right to complete the sale of stock on subscriptions theretofore accepted and part payments made thereon.

"9th. The said Securities Company covenants and agrees to and with the Coal Company that the stock of the Coal Company will not be listed and sold on any Stock Exchange, and that upon default thereof, this contract will immediately cease and determine.

"10th. That the said Coal Company covenants and agrees to and with the said Securities Company that it will at all reasonable times permit the said Securities Company, its agents and prospective customers, to examine and inspect any

part of the plant of the said Coal Company except the binder room now in the course of erection in Newark, New Jersey, and that it will cooperate with the said Securities Company and its agents in the sale of the stock of the Coal Company.

"11th. It is understood and agreed that the Coal Company shall bear no part of the expense that the Securities Company may incur under this agreement whatsoever.

"12th. It is expressly understood and agreed that all sales of stock of the Coal Company while this agreement is in force, shall be made exclusively by or through the Securities Company."

At the time this contract was negotiated and signed, Mr. L. S. Berg was the president of the company. He had formerly been president of the Chicago, Mobile & Northern Railroad. He also was a large stockholder in the New Orleans Terminal Company, but what his official connection with that company was, I do not recall. He had also, before the war, been engaged in the manufacture of automobile tires in France. At the time he became connected with our company, he was retired. When this contract was executed, I was vice-president, general manager and a director of the corporation. I had no interest whatsoever, directly or indirectly, in the Burnrite Coal Securities Company, nor, so far as I know, did any officer or director of the Burnrite Coal Briquette Company. The general attorney for the latter company, Mr. Roth, I am informed, at Mr. Graubart's request, incorporated the Securities Company. A Mr. Kobsa was associated with Mr. Graubart, but what interest he had in the company, I do not know. There was no other person, so far as I know, in any way financially interested in the Securities Company.

This method of disposing of the Briquette Company's stock was the subject-matter of very serious



consideration and was eventually considered as the best which then presented itself. It was necessary at that time to sell the stock in order to erect the company's plant. When the Securities Company had purchased a sufficient number of shares of common stock to raise the purchase price thereof, according to the term of the contract, over one dollar a share, Mr. Graubart appeared at a meeting of the board of directors and stated that the expense of selling this stock and collecting the purchase price from the various purchasers thereof (a great part of it being sold on the instalment plan) was so great that if he was compelled to pay the Briquette Company as much as \$1.25 a share for the common stock, he would, in order to come out whole and make a small profit, have to raise the price to the said purchasers to such an extent that it would make sales more difficult, if not impossible. Thereupon, after consideration of the matter, the board of directors determined to sell the balance of the common stock provided for in the contract at \$1 per share. My recollection is that all of this appears on the minutes of the company, but as I have not seen the minutes for a long while, I am not sure. I do not know, except from hearsay, what prices the Securities Company received for the stock which they purchased from us, or what other brokers, who purchased the stock direct from the Securities Company or others, eventually sold it for, but I do know that neither I, nor, so far as I have ever been advised, any officer or director of the Briquette Company, ever received, directly or indirectly, a dollar of any of the profit made by the Securities Company upon the purchase and sale of the Briquette Company's stock, or of the profit made by any other person who dealt in such stock. On several occasions where the Securities Company was negotiating for the sale of large blocks of stock, I went to the places where the negotiations were taking

place for the purpose of lecturing on the process, the briquette industry and its future, and demonstrating the product. On these occasions, the Securities Company paid my expenses. In giving these lectures and making these demonstrations, I was, of course, serving the interests of the Briquette Company, as well as of the Securities Company. As I recollect it, practically all of the stock provided for in the before-mentioned contract had been purchased by the Securities Company by the end of the year 1920, but there may have been a small amount purchased during the year 1921. I could not state definitely regarding this without reference to the books of the company.

2. *Burnrite Coal Service Company.*—So far as I know, the Burnrite Coal Securities Company's name was never changed. In 1921, a corporation known as the "Burnrite Coal Service Company" was formed under the laws of New York. The primary object in the formation of it was to sell the product of the Burnrite Coal Briquette Company in New York City and vicinity. It was to be a wholesale concern, and it was also designed to buy and sell raw coal. I had no interest in that company and never did have any. However, my half-brother, Mr. I. C. Gyenes, was the main organizer thereof and now practically owns the company. I induced him to organize the company and to engage in the business which the company was formed to conduct.

The Briquette Company was not in a position to market its product among the consumers or retail dealers in New York City.

The Service Company has always paid the prevailing market price for the briquettes which it has purchased from the Burnrite Company the same as any other coal dealer, and has had no exclusive sales or other right.

I have no recollection of having given Mr. Yors-ton any instructions to destroy a bill rendered by the Coal Service Corporation to the Burnrite Coal Com-pany for coal purchased and to transfer the account to the Shamokin Valley Coal Company. It may be possible, however, that something of the kind was done, because the Burnrite Company was purchasing coal from the Shamokin Valley Coal Company, and also from the Service Company. The bills may have become mixed.

I have no first-hand information as to the amount paid by the Service Corporation for any coal which it has sold to the Burnrite Company. However, from my general knowledge of market conditions, I know that the ordinary price to wholesalers of the quality of coal sold by the Service Company to the Burnrite Com-pany was from 60 cents to 65 cents. The Burnrite Company could not have purchased this coal anywhere in the market for less than 75 cents. Indeed, on many occasions when the Service Company was unable to supply it with coal, it was required to pay \$1 per ton.

3. *The Bond Issue.*—As shown in the affidavits heretofore filed, practically all of the moneys realized from the sale of the company's capital stock, which constituted its entire cash capital, was used in the construction and equipment of its manufacturing plant at Newark. From time to time, I loaned the company money as it was needed. Whenever we manufactured, we found that the moneys received for our product ex-ceeded the expense of creating the same, but the ma-chinery which was installed in the plant and about which, as appears in one of my prior affidavits, we had litigation with the Mashek Engineering Company, did not function properly in the manufacturing under the formulæ and processes which I had acquired after long investigation, research and experimentation, and

which I had turned over to the first Burnrite Company, and which the latter in turn had turned over to the defendant herein. For instance: In the formation of the binder, certain materials are required to be mixed in their proper proportions respectively. This had to be done by machinery. The machinery as installed did not function properly in this respect. There were many other respects in which it did not function properly. The result was that from the time the machinery was installed, continual changes had to be made therein. It would run from say a week to ten days producing an excellent product and then suddenly the product would be defective. The result was that we would have to shut the plant down and ascertain what the reason was. We knew it was not in the secret formulæ and processes, because they had theretofore produced a perfect product, and, consequently, must be in the machinery.

This prevented the continuous operation and the marketing of its product in sufficient quantities to operate as a whole profitably during this experimental or formative stage. By reason thereof, the company had become indebted to me and was indebted to others. As the properties had cost approximately \$550,000 and were worth at least \$335,000 under a generous depreciated value, it was deemed advisable by the board of directors to issue bonds of the par value, in the aggregate, of \$100,000, secured by a mortgage (the property being then unencumbered except to the extent of \$2300), with which to raise funds to pay its debts and to afford it sufficient working capital until it could begin to market its product on a large and continuous scale. It was becoming increasingly manifest at that time that the machinery was being brought to a state of perfection where the company could look forward to successful and continuous operation in the future. The larger creditors of the company were all offered these

bonds in satisfaction of, or as security for, their indebtedness. I offered to have the moneys due me thus secured. The Service Corporation did likewise, as well as others. For instance: The Jones Lumber Company, Fairbanks Manufacturing Company and others. Indeed, when the receivers were appointed, the great majority of the creditors of the company whose claims were large enough had agreed to accept bonds. My offer to accept bonds for my indebtedness was accepted by the board of directors at a meeting which was held while I was away. I did not endeavor to take any advantage of the other creditors. The opportunity for them to take the bonds has, at all times, been open, and will continue so, when the affairs of the company are again placed in the hands of its officers.

4. *The Buchan Formulae*.—Mr. Yorston's statement that for two months prior to the closing of the plant prior to the appointment of the receivers, my formulae had not been used, but instead one devised by Mr. Buchan, is untrue. The only changes which were made by Mr. Buchan were in respect to the machinery.

5. *The Burnrite Coal Briquette Company of New Jersey*.—The plant of the defendant company located at Newark had a capacity of only 100,000 tons of briquettes a year. There was a market for all of its product in Newark, New York City and surrounding towns. It had no facilities for shipping by water, and, therefore, could not take advantage of the cheaper water transportation to cities located along the Atlantic seaboard or for export. Moreover, it did not have the capital with which to increase its plant, either at Newark or elsewhere, to meet a large trade. As the briquette industry had, to my mind, great possibilities, I, of course, did not wish that it should be limited to the small industry at Newark. Accordingly I succeeded in

interesting some financial interests in the purchase of a site and the erection of a plant at Perth Amboy, New Jersey, on tidewater. The Newark company then entered into a contract with the Perth Amboy company, whereby the latter, in consideration of the Newark company's granting it permission to use the latter's secret formulæ and processes, to turn over to it 50 per cent. of its common stock and to pay it a royalty of 10 cents on every ton of briquettes manufactured and sold by it. This, to my mind, was a most advantageous contract for the Newark company, and if the project goes through, the royalty accruing to it will be tremendous. After the contract between the two companies was entered into, 300,000 shares, of the par value of \$1,500,000, of the common stock of the Perth Amboy company was turned over to the Newark company in the form of interim certificates. Some of these certificates were sold and the cash, at the request of some stockholders, distributed among the stockholders of the Newark company as a dividend. The remaining interim certificates were also distributed among the stockholders of that company.

The site for the plant has been purchased and the necessary preliminary engineering work to the erection of the plant has been done, and plans have been prepared for the buildings and machinery. The project has been seriously retarded because of the financial situation of the last year. It is hoped that as soon as financial conditions are better we can go ahead with the project.

I do not consider these interim certificates by any means worthless.

The agreement between the two companies is in the hands of the receivers. A copy of it will be furnished to the Court if it deems it material and desires it.

6. *The So-Called Common Law Trust.*—Prior to the month of April, 1922, I was approached by a group of gentlemen, owners of coal properties in Pennsylvania, who desired to enter into an agreement with the defendant corporation for the purpose of manufacturing briquettes under our formulæ and processes. This group was represented by Mr. Jonathan P. Edwards, of Philadelphia. I am informed by my attorney, although I have no definite knowledge thereof myself, that these gentlemen proposed to become associated in what is known as a common law trust rather than as a corporation. It was proposed that they were to have the exclusive license to manufacture under our processes in certain States. We were to receive 100,000 shares of the trust out of a total capitalization of 1,000,000, and a royalty of 10 cents per ton on all briquettes manufactured by them. A draft of the agreement was made and was to be brought before a directors' meeting, which was prevented by the appointment of receivers in this case. Upon a subsequent examination of the draft of contract, attached to the affidavit of Francis M. Yorston, filed herein and verified on May 20, 1922, I find it contains a provision to the effect that the "agreement is subject to an agreement between the corporation (the defendant company) and F. M. Crossman, wherein, among other things, the said F. M. Crossman, his legal representatives and assigns, is entitled to receive a royalty of 10 cents per ton on all briquettes sold to the corporation (the defendant company)." I am at a loss to understand the meaning of this clause, because the contract in question did not contemplate the sale by the defendant company of any briquettes, but the manufacture and sale thereof by the common law trust. There was nothing in my contract with the defendant company which gave to me the right

to receive 10 cents per ton on briquettes manufactured by those to whom the defendant company might grant licenses. Consequently, I think that something must have been left out of the contract by the scrivener or the draughtsman must have made a mistake. Certain it is that it was contemplated that the defendant company was to receive a royalty of 10 cents. This draft of agreement was never acted upon by the directors or officers. In fact, I do not think that I examined it until after this suit was brought. So far as I know, it was prepared under the direction of Mr. Yorston. The purpose of the agreement was to produce an income for the defendant company by way of royalties and the stock of the common law trust, which, for the reasons before stated, it would have been otherwise unable to realize. I thought at the time, and still think, that the proposition was an advantageous one for the company. One of the gentlemen connected with this group is the person to whom Mr. Yorston, after he had entered into the agreement with Mr. Buchan, a copy of which is attached to one of my previous affidavits, endeavored to enter into a contract for the sale, on his own account, of a briquette binder formula.

7. *Stockholders' Meeting.*—The statement in Mr. Yorston's affidavit that on or about April 1, 1921, he called my attention to the fact that the by-laws of the company provided that a meeting of the stockholders should be held on the first Monday of each year, and that I said that there was not going to be any stockholders' meeting, etc., is absolutely and unqualifiedly false. The fact is that some time later, but after the time when, as I was advised, notice must be given of the meeting, had expired, he informed me that he had neglected to give notice of the meeting. I thereupon called up Mr. Roth, the company's attorney, and asked him whether a meeting could be called for the date



specified in the by-laws or at a later date, giving the notice required by the by-laws. He advised me that it was not compulsory that the meeting should be held on the date specified in the by-laws, but could be called for a later date. I thereupon advised Mr. Yorston to call a meeting, giving the requisite notice. Before he had done so, however, he was discharged from the employ of the company.

FRANCIS M. CROSSMAN.

Sworn to and subscribed before me this ninth day of June, 1922.

GROVER J. CAREY,  
(Seal) *Notary Public*  
of New Jersey.

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AFFIDAVIT OF HERMAN ROTH.

STATE OF NEW JERSEY, {  
COUNTY OF HUDSON, { ss.:

HERMAN ROTH, being duly sworn, on his oath deposes and says:

I reside in the City of Jersey City, in this District, and am an attorney and counsellor-at-law of the State of New York, and an attorney-at-law of the State of New Jersey. About the middle of April, 1922, Mr. Francis M. Crossman, president of the Burnrite Coal Briquette Company, called me on the telephone and stated that Mr. Yorston, the company's secretary, had neglected to send out notices for the annual meeting of the stockholders of said company, as required by its by-laws, and that at that date there was not sufficient time to send the requisite notice and asked my advice as to what should be done under the circumstances. Mr. Crossman seemed to be very much put out because of the failure on the part of the company's

secretary to have sent these notices. Mr. Crossman asked me whether notice could then be sent out for the fixed date of meeting, or whether notice should be sent for a later date in view of the fact that the requisite number of days' notice could not be given for the meeting to be held on the date fixed by the by-laws. I advised Mr. Crossman that it was not absolutely compulsory that the meeting should be held on said date, but could be called for a later date. Mr. Crossman thereupon stated that he would instruct Mr. Yorston, the company's secretary, to immediately prepare and mail notices to the stockholders for the annual meeting of stockholders, which instructions I am informed and believe he did give to Mr. Yorston, but Mr. Yorston was discharged from the company's service before he had sent out such notices owing, as I am informed and believe, to his failure to perform his duties.

HERMAN ROTH.

Sworn and subscribed to before me this ninth day of June, 1922.

GROVER J. CAREY,  
(Seal)      *Notary Public*  
                    *of New Jersey.*

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AFFIDAVIT OF EDWARD C. SMITH.

STATE OF NEW JERSEY, {  
COUNTY OF HUDSON,    { ss.:

EDWARD C. SMITH, of full age, being duly sworn according to law, on his oath says: That he has reviewed the report, dated May 26, 1922, of Puder & Puder, accountants, of the investigation of the affairs of the Burnrite Coal Briquette Company as of May 11, 1922. In said report, said accountants purport to show a net loss from January 1, 1922, to May 11, 1922,

of \$14,261.84. In my report of the condition of the approximate trading and profit and loss account of said Burnrite Coal Briquette Company, dated May 11, 1922, I show a net loss for the same period of \$5607.08.

The difference between the purported net loss shown by my report results mainly from a difference in the stating of the inventories, which are as follows:

My inventory statement .....	\$15,792.73
Puder & Puder .....	6,919.87
Difference .....	\$8,872.86
Puder & Puder statement of net loss .....	\$14,261.84
My statement of net loss .....	5,607.08
Difference .....	\$8,654.76

In my opinion, this difference in the statement of inventories and the consequent difference in the statement of net loss for the period indicated, results from the failure of Puder & Puder to include in the inventory of assets of the Burnrite Coal Briquette Company on hand, a carload of binder material, which, I am informed by the treasurer of the company, was received at about the time of the receivership proceedings, and for which trade acceptances of the company had been given; and also the failure of Puder & Puder to include in the valuation of coal and binder material on hand the freight on the same for transporting the same from the mines to the plant of the company, which freight is included in my valuation of that material.

EDWARD C. SMITH.

Sworn to and subscribed before me this ninth day of June, 1922.

GROVER J. CAREY,  
(Seal) *Notary Public*  
*of New Jersey.*

## AFFIDAVIT OF EDWARD M. RODROCK.

STATE OF NEW JERSEY, {  
COUNTY OF PASSAIC, { ss.:

EDWARD M. RODROCK, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Passaic, New Jersey.

I own 2000 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

EDWARD M. RODROCK.

Sworn to and subscribed before me this eighth day of June, 1922.

JOHN P. LUX,  
(Seal) Notary Public  
New Jersey.

AFFIDAVIT OF DANIEL VAN WINKLE.

STATE OF NEW JERSEY,      {  
COUNTY OF                        { ss.:  
  
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DANIEL VAN WINKLE, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

We own 2000 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

THE VAN WINKLE-BROMLEY  
LUMBER COMPANY.

DANIEL VAN WINKLE,  
*Sec'y and Treas.*

Sworn to and subscribed before me this third day of June, 1922.

(Seal) JOHN P. LUX,  
Notary Public  
New Jersey.

## AFFIDAVIT OF OSCAR P. SCHALLER.

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX,

OSCAR P. SCHALLER, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 400 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

OSCAR P. SCHALLER.

Sworn to and subscribed before me this seventh day of June, 1922.

JOHN P. LUX,  
(Seal) Notary Public  
New Jersey.

AFFIDAVIT OF B. GRAMATICA.

STATE OF NEW JERSEY, } ss.:  
COUNTY OF PASSAIC, }

B. GRAMATICA, of full age, being duly sworn according to law, upon his oath says:

We are engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

We own 200 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

PUGLIA GRAMATICA,  
B. GRAMATICA.

Sworn to and subscribed before me this eighth day of June, 1922.

(Seal)

JOHN P. LUX,  
*Notary Public*  
*New Jersey.*

## AFFIDAVIT OF JOHN STOLZ.

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX,

JOHN STOLZ, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 200 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

JOHN STOLZ.

Sworn to and subscribed before me this seventh day of June, 1922.

(Seal)

JOHN P. LUX,  
Notary Public  
New Jersey.



**AFFIDAVIT OF JOS. KREMER.**

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX,

JOS. KREMER, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

I own 200 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

**JOS. KREMER.**

Sworn to and subscribed before me this seventh day of June, 1922.

(Seal)

JOHN P. LUX,  
Notary Public  
New Jersey.

## AFFIDAVIT OF GEORGE W. BOGEN.

STATE OF NEW JERSEY, }  
COUNTY OF                   , { ss.:

GEORGE W. BOGEN, president Lackawanna Lumber and Coal Company, of full age, being duly sworn according to law, upon his oath says:

I am engaged in the coal business in the State of New Jersey, and am a stockholder in the Burnrite Coal Briquette Company, whose principal place of business is in Newark, New Jersey.

We own 100 shares of stock. From my knowledge of the coal business I am certain that all briquettes which the Burnrite Company can manufacture during the ensuing year and until April of next year can be sold at a very substantial profit. This will be due in a large measure to the shortage in the coal supply which will follow the coal strike.

I am familiar with what the Burnrite Company and its officers have been doing for the last two years. I have entire confidence in Mr. Crossman and the management as now constituted and believe that if the company is permitted to go on that it will meet with substantial financial success. On the other hand, if a receivership is continued I can see nothing but liquidation and a consequent sacrifice of assets, to say nothing of the entire loss of the business, in the building up of which a considerable sum of money has been expended.

GEORGE W. BOGEN.

Sworn to and subscribed before me this seventh day of June, 1922.

(Seal)

JOHN P. LUX,  
Notary Public  
New Jersey.

AFFIDAVIT OF JOHN P. LUX.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss.:

JOHN P. LUX, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 1200 shares of the stock of the said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and of the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

JOHN P. LUX.

Sworn and subscribed to before me this eighth day of June, 1922.

(Seal)

WM. D. BELL,  
*Notary Public*  
*for New Jersey.*

## AFFIDAVIT OF JOHN E. LUX.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

JOHN E. LUX, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and hold 400 shares of the stock of the said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and of the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

JOHN E. LUX.

Sworn and subscribed to before me this seventh day of June, 1922.

(Seal)

JOHN P. LUX,  
*Notary Public*  
*New Jersey.*

AFFIDAVIT OF JOSIE P. LUX.

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX, {

JOSIE P. LUX, of full age, being duly sworn according to law, upon her oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 200 shares of the stock of the said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and of the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

JOSIE P. LUX.

Sworn and subscribed to before me this seventh day of June, 1922.

(Seal)

JOHN P. LUX,  
Notary Public  
New Jersey.

## AFFIDAVIT OF JENNIE B. LUX.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

JENNIE B. LUX, of full age, being duly sworn according to law, upon her oath, says:

I am a stockholder of the Burnrite Coal Briquette Company and own 200 shares of the stock of the said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and of the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

JENNIE B. LUX.

Sworn and subscribed to before me this seventh day of June, 1922.

(Seal)

JOHN P. LUX,  
Notary Public  
New Jersey.

AFFIDAVIT OF ANDREW FISHER.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

Andrew Fisher, of full age, being duly sworn according to law, upon his oath says:

I am a stockholder of the Burnrite Coal Briquette Company and own 100 shares of the stock of the said company.

I have every confidence in the integrity and business ability of the present management of the Burnrite Coal Briquette Company, including Mr. Crossman, its president and general manager, and I am anxious that they continue in its management.

I am likewise satisfied that it is to the best interests of the stockholders and of the company that the present application for a receivership be denied. I am convinced that the only effect of continuing the same will be to force the company into liquidation, resulting in the loss to the stockholders of their interests in the company.

I am likewise convinced that the company will make a large amount of money if permitted to continue in business unhampered, especially in view of the coal shortage consequent upon the coal strike.

ANDREW FISHER.

Sworn and subscribed to before me this seventh day of June, 1922.

(Seal)

JOHN P. LUX,  
*Notary Public*  
*New Jersey.*

AFFIDAVIT OF ALFRED L. KIRBY.  
(Filed June 28, 1922.)

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

Alfred L. Kirby, being duly sworn according to law, on his oath deposes and says:

On the tenth day of June, 1922, I submitted an affidavit, which was intended as a report to the Court of the activities of Mr. Duffy and myself as receivers. This affidavit was drawn up by myself without benefit of counsel and is a simple statement of facts covering conditions of defendant company as we found them. This affidavit was drawn with malice toward none, as it would be impossible for the receivers to like or despise anyone with whom they are not even casually acquainted. It was not my intention, in drawing up this affidavit, to have the receivers drawn into an endless controversy with the defendant company, with which we have no interest, excepting as representatives of the Court.

I have read the affidavits by H. C. Rodemann, dated the fifteenth day of June, 1922, and Francis M. Crossman, dated the nineteenth day of June, 1922, and I hereby answer the many untruthful statements in the order in which they are made in these affidavits.

In explaining the operating loss of nearly \$50,000 for the year 1921, Mr. Rodemann states that this is absolutely untrue, as it was explained in the proceedings that the plant of the company was in process of construction and improvement during the year 1921. According to the minute book, at a meeting held February 21, 1920, Mr. Crossman stated the plant would be ready for operation March 6, 1920, and the records of the company show that the plant was actually in



operation during the year 1920, and the production from May 1, 1920, to December 31, 1920, was 20,954 tons of briquettes. It is evident, therefore, that the plant was not in process of construction during the year 1921.

The only inventory received from Mr. Buchan, plant superintendent, was for raw and finished materials, and Mr. Buchan stated on many occasions that there were 480 tons of finished briquettes on hand, when the receivers took charge. The receivers have sold 287 tons up to June 21, 1922, and the supply of briquettes is exhausted. During the year 1921 the total output of this plant amounted to 16,125 tons, and from January 1 to May 6, 1922, the plant had been in operation only thirty-five days, and the total tonnage was 3601 tons. The plant is supposed to be capable of producing 150 tons of briquettes per day of ten working hours, and from the above figures it is evident that this plant was not properly managed, and certainly was not operating at a profit.

Mr. Rodemann states none of the company's officers or directors had, directly or indirectly, any interest in the Burnrite Securities Company, but he fails to submit any evidence to refute the positive statements made in my affidavit of June 10th.

Mr. Rodemann states that the books of the company have been in the possession of the receivers since the date of their appointment, and "we have not had access thereto." This statement is absolutely false, as Mr. Rodemann was retained in the employ of the receivers three days after their appointment, and Mr. Rodemann, with the company's New York accountants, continued to audit the books of the company for several days after the appointment of receivers and their bill for such service guaranteed by the receivers. Mr. Rodemann himself was at the office of the

company, with free access to the books and making entries therein until restraining order was issued by Judge Bodine on May 19, 1922. On Friday, May 26, Mr. Rodemann and the company's accountant, Mr. Smith, spent practically the whole day going over the books of the company, and when they were finished they stated that they had all the information they desired and would not care to look at the books again.

Mr. Rodemann points out that "no definite single transaction has been pointed out in which the company, or any of its officers, can be charged with wrongdoing." Mr. Rodemann is evidently not versed in the art of reading between the lines, but I wish to assure Mr. Rodemann, as well as all other stockholders of the company, that if any such charges are to be made, the receivers will do so before the proper authorities, in proper form, at the proper time.

Mr. Rodemann states that at the meeting of stockholders held in May, 1921, none of Mr. Crossman's stock was voted, and I wish to point out that this was not necessary, as all of the proxies represented at the meeting were held by Crossman, Rodemann and Yors-ton, all officers of the company.

Mr. Rodemann states that my criticism of the bookkeeping method shows how little I am familiar with bookkeeping. This I frankly admit, but I am not at all satisfied with his explanation that \$57,000 paid out in the form of commissions still remains an asset of the company and should be so shown on the books. Neither am I satisfied with his statement that these items were charged on the company's books long before the plant was erected, and that the \$70,000 loss in 1920 is only a bookkeeping method, as the company was not in operation in the year 1920, whereas, I have previously pointed out in this affidavit that the actual production for 1920 was 20,954 tons of briquettes.

Mr. Rodemann's statement that Mr. Lucking and all of the stockholders present at the stockholders' meeting knew all about these transactions would carry more weight if he attached to his affidavit supporting affidavits from Mr. Lucking or some of the stockholders referred to.

I wish to point out that in all of the meetings recorded in the minute book of the company the meeting held November 25, 1919, was the only one at which there was not time for reading of minutes of previous meeting.

In my affidavit of June 10th I stated that the plant had been shut down for at least two weeks prior to our appointment, and I find upon further investigation that this statement is incorrect, and I hereby withdraw said statement and wish to correct same to read that the plant was shut down on May 6th, or five days prior to our appointment.

This is the only statement, however, made by me in said affidavit of June 10th that I withdraw or admit to be incorrect in any detail.

In concluding my answer on the Rodemann affidavit, I can only state that the receivers have no way of knowing what the officers of the company intended to do, but we could only report on what they actually did do and did not do.

I have read affidavit submitted by John B. Buchan, dated June 13, 1922, and note he states that he could put the plant in fine condition for the sum of \$1500, but he fails to attach to his affidavit list of the repair parts he proposes to furnish, and, consequently, it is impossible for me to compare his proposed work with that suggested by Mashek in his written report, which has already been submitted to the Court. Buchan also states that the reason for the closedown on May 6th was the delay in the delivery

of the car of starch, which was held up by the interruption on the railroad up country due to floods. I note that Mr. Buchan fails to state the cause for the shutdown January 19th to February 6th, February 11th to March 1st, March 4th to March 27th, April 1st to April 26th, April 29th to May 1st, all in the year 1922.

Before answering Mr. Crossman's affidavit, dated June 19, 1922, I wish to point out that the receivers had only about three weeks' time in which to make their investigation of the activities of this company, and its promoters, which activities extended over a period of five years, and the great majority of statements of facts made by me in my affidavit of June 10th are supported by proper evidence, and it seems strange that Mr. Crossman is unable to get at least a supporting affidavit from his co-worker and late co-director, Dr. Chayes, referring to the sale of stock on the curb market.

Mr. Crossman states that "when I or counsel for the company, on June 5th, 1922, in court, stated that I owned 33% of its stock, the statement was directed to my ownership in the defendant company." A perusal of the stenographic notes of court proceedings on June 5, 1922, will show that this statement was not directed to Crossman's ownership in the defendant company, but was most certainly directed to his ownership in the original briquetting company, as the discussion at that time was in connection with the payment of more than 600,000 shares of stock by the defendant company to the original briquetting company, and when Mr. Crossman was asked if he was not the sole owner of this original briquetting company he replied that he only owned approximately 30 or 33 per cent. of the stock in this company.

I am pleased to refer again to all of the corre-

spondence submitted with my affidavit of June 10th, and I reiterate that in no one of these letters does Mr. Crossman mention his secret formula or binder, and I wish to point out that said letters are originals, bearing signature of Mr. Crossman himself. If there were any such letters passing between Crossman and Mashek referring to the Crossman secret formula, it is strange that Mr. Crossman does not at least attach a copy of such letter or letters to his affidavit.

Mr. Crossman's statement that the briquettes he requested to be sent to him he desired to have so that they might be tested and compared with the process that he had, I refer again to letter dated June 16, 1917, by Crossman to Mashek Engineering Company, attached to my affidavit of June 10th, in which Crossman states, "I will either have to produce or quit," and in which he also states, "I have to get about a ton or more of smokeless briquettes which give as much heat or more than coal, must stand the necessary fire test, before these parties will proceed with handing over their checks." It must be evident that if Crossman wanted these competitive briquettes so as to show that with his secret formula it was possible to make the only smokeless briquette he would not be anxious about the quality of briquette he received from competitors.

Mr. Crossman states that he was familiar with the first page of the salesmen's information binder issued by the Burnrite Coal Securities Corporation, and that he was not responsible for any other pages that may have been inserted in the book. In this connection I wish to state that said binder was taken by me from Mr. Crossman's desk in the president's office of the defendant company; also the letter from Dr. Chayes referring to purchase of stock on the curb market was found in Mr. Crossman's desk in the of-

fice of the defendant company, and was not taken from the general files.

The contract covering royalties between Crossman and the defendant company was in lieu of salary, and compensation for his work as general manager, and from various statements in the numerous affidavits made by Crossman in this action it is evident that he was not very familiar with the workings of the company or the various securities and service sales companies affiliated with the defendant company.

I did not state in my affidavit of June 10th that any of the security or service corporations were subsidiaries of the Burnrite Coal Briquette Company, but I did state that the Burnrite Coal Briquette Company was affiliated with these various companies. The definition of the word "affiliate" is to be intimately connected or associated, and I reiterate that the defendant company was affiliated with these various companies, or, in other words, it was intimately connected and associated in its various business dealings.

In referring to contract between himself and the company Mr. Crossman states "that I feel that I am entitled at least to this nominal consideration for the many years' labor and the large expenditures of money made by me." Mr. Crossman ignores the original payment of 602,150 shares of stock paid to the original briquetting company which he owned and controlled; also the 10,000 shares of stock voted to him at the directors' meeting held September 3, 1919; also his expense account of \$10,850 for taxicab hire, entertaining, etc., which item of compensation I neglected to mention in my affidavit of June 10th.

I did not state in my affidavit of June 10th that Mr. Kennedy resigned because of the proposition of the Burnrite Coal Briquette Company of New Jersey.

I simply pointed out that it was at this meeting that Mr. Kennedy resigned and refused compensation for past services. I regret that I neglected to supply the necessary supporting evidence of this important fact, and I am happy to do so at this time, and Mr. Kennedy's letter of resignation is attached hereto. It will be noted that Mr. Kennedy, having discussed the reasons for his resignation privately with Mr. Crossman, finds it unnecessary to put the same in writing at the time of his resignation.

Mr. Crossman states that my statement to the effect that he was engaged in various enterprises prior to 1917 is absolutely false, but he does admit that he was engaged in the sale of alcohol, which is not so far removed from whiskey as corsets are from briquetting. He fails to enlighten us, however, on his activities prior to 1917, which would be a very simple matter for him to attend to in refuting the statements made in my affidavit of June 10th. I admit my previous statement was somewhat general, and to be more specific, I will state that Mr. Crossman was engaged with Weingarten Brothers, Sixth Avenue and Thirty-fourth Street, New York City, manufacturers of corsets. He was engaged or connected with H. N. Zelinka & Company, of 299 Broadway, New York City, exporters of dry goods, which, no doubt, includes the silks and millinery materials referred to by me; also he was engaged or connected with Fred L. Engel, 655 Fifth Avenue, dealer in Oriental rugs.

In conclusion, I wish to state that it is impossible for me to secure supporting affidavits from the above-mentioned concerns, and it is also impossible for me to secure supporting affidavits for my statement that Crossman and his brother, Gyenes, are directors in all of the ten companies referred to in my affidavit of June 10th, and I wish to state that I will be only too

pleased to withdraw these statements upon presentation by Mr. Crossman of proper affidavits disclosing the names of the concerns he actually worked for prior to 1917, and also the names of the actual directors and owners of the various Burnrite securities and service corporations.

ALFRED L. KIRBY.

Sworn to and subscribed before me this twenty-third day of June, nineteen hundred and twenty-two.

(Seal)

P. L. BRYCE,  
*Notary Public*  
*of New Jersey.*

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J. J. KENNEDY,  
Engineer,  
52 Broadway, New York.

September 4, 1920.

Vice-President and Board of Directors,  
Burnrite Coal Briquette Company,  
Newark, N. J.

Dear Sirs:

I hereby notify you that after today I shall not serve as an officer or director of the Burnrite Coal Briquette Company, and that my only connection with the company will be that of a stockholder.

As I have discussed my reasons for taking this step with Mr. Crossman, it is not necessary for me to repeat them.

I am confident that the manufacture of coal briquettes will become one of the largest businesses in the country, and I hope that the Burnrite Company will be a very important factor in it.



Regretting the necessity for severing my connection with the company, I remain,

Respectfully yours,

J. J. KENNEDY.

Copies to:

Mr. H. C. Rodemann, Treasurer,

Herman Roth, Esq., Secretary.

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AFFIDAVIT OF FRANCIS M. YORSTON.

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

FRANCIS M. YORSTON, of full age, being duly sworn according to law, upon his oath deposes and says:

I have heretofore made several affidavits in this case.

I have read the affidavit of Mr. Buchan and the affidavit of Mr. Crossman, which would seem to indicate that Mr. Buchan made no change in the formula.

I have in my possession documents which are signed by Mr. Buchan in his own handwriting at the place indicated on the copies hereto annexed and made a part hereof, and which were submitted to me by Mr. Buchan as evidence that he had invented and was using a new process. It will be noted that the new process is called the Ingles Process. I asked Mr. Buchan what the significance of that term was, and he said that it was merely a name which should be applied to the new process.

FRANCIS M. YORSTON.

Sworn and subscribed to before me this twenty-eighth day of June, 1922.

ELIZABETH COONS,  
*Notary Public*  
*of New Jersey.*

## SPECIAL INVESTIGATIONS.

March 23, 1922.

	<i>Coal</i>	<i>A.</i>	<i>B.</i>	<i>X.</i>
Moisture	2.25	1.40	1.58 =	-0.18
Vol. matter	5.22	6.20	11.20 =	-5.00
Fixed C.	66.95	71.32	64.10 =	x 7.22
Ash	22.58	21.08	23.10 =	x 2.02
Sulphur	0.52	0.70	0.70 =	0.00
B. T. U.	11021	11434	11027 =	x 407

(Analysis made by Fuel Engineering Co. of New York.)

*The coal sample* represents an average of the coal going to the mixers.

*Sample A* shows the quality of the briquettes made with a special binder.

*Sample B* shows the quality of briquettes made with the usual plant formula.

*Column X* gives the difference in the analysis between *A* and *B*.

(Signed) JOHN B. BUCHAN.

## BURNRITE COAL BRIQUETTE PLANT.

## COMPARISONS.

(1) *Coal from stock to mixers.*

In the present method of working, the dust is elevated from the yard, passed through the driers into the storage bin, from whence it is fed by a drag chain into a conveyer, which conveys it to the pulverizer, where it is ground to a fine state of division. It is then elevated to the pre-heater, where it is deprived of all trace of moisture and is then ready for the mixers, where it is incorporated with the binder.

INGLES PROCESS.

The coal after passing through driers is screened through a 3-16" screen which removes pieces of rock, slate, etc., together with any coal that will not pass through the screen. This oversize, usually about 5% of the whole, is passed down to the boiler room, as it is found to contain about 70% of large coal and 30% of slate, stone, etc. By this means it has been found possible to reduce the ash contents from 22% to 17.5%.

(2) *Binder.*

All anthracite coal contains sulphur, usually 0.5%, and if this body exceeds 0.7% sulphur, fumes can be easily detected during its combustion. In spite of this fact, by the Burnrite process, more sulphur is added in the form of sulphite liquor (waste from the pulp mills) with the consequence that the briquettes on burning give off gases rich in sulphur, which are disagreeable and often cause a nuisance, as on a dull heavy day when the atmosphere is dense, the gases, being heavy, descend and can be detected at a distance.

INGLES PROCESS.

By this process no sulphur compounds enter into the binder composition in place of which the constituents of the binder are such that the sulphur naturally present in the coal is combined so as to prevent the formation of any sulphurous gaseous compounds.

(3) *Baking Process.*

At the present time the briquettes are sent from the press to the ovens direct, with the result that as they contain 10 to 12% of moisture, at least one-quarter of the time they are in the ovens is occupied in drying them.

It may be asked if this amount of water is necessary in the manufacture of briquettes, and the reply

is: if the briquettes are to compete successfully with anthracite coal, it is absolutely necessary that the binder shall be in such a form that it will easily and thoroughly incorporate with the coal. Furthermore, it materially reduces the cost of binder per ton of briquettes. In the Burnrite process one part of binder is required for 15 parts of coal, while in the "Ingles" process one part of binder is sufficient for 22 to 24 parts of coal.

#### INGLES PROCESS.

Before the briquettes are sent to the ovens they are passed through a desiccating process, which is heated by exhaust steam, which at the present time is turned into the atmosphere.

#### COST OF PRODUCTION.

Based on actual working figures.

Coal	\$3.47	\$3.38
Binder	1.11	0.53
Labor	0.58	0.58
Fuel	0.54	0.54
Light, Power, Water	.09	.09
Lubrication	0.05	0.05
Repairs	0.10	0.10
Cost per ton	<hr/> \$5.94	<hr/> \$5.21

The same fuel, labor, light, power, water, lubricants and repairs would be employed if the plant were speeded up to 150 tons per day, which would reduce the cost to

Burnrite Process	\$4.75
Ingles Process	4.17

Working the plant to its full capacity with the Ingles improvements the cost would be to

\$3.91 per ton

which under the circumstances is impossible with the Burnrite process.

These prices include a freight charge on the coal of \$2.50 per ton, but do not include insurance or office expenses.

It will be interesting to compare the composition of the briquettes made by each of the processes.

(Analysis made by the Fuel Engineering Company of New York.)

	<i>Burnrite</i>	<i>Ingles</i>
Moisture	1.58	1.40
Volatile matter	11.20	6.01
Fixed carbon	64.10	72.80
Ash	23.10	21.08
Sulphur	0.78	0.52
B. T. U.	11027	11494

(Signed) JOHN B. BUCHAN.

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MEMORANDUM.

(Filed July 11, 1922.)

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JOSEPH L. SMITH, Esq., Solicitor for Complainant  
(Merritt Lane, Esq., of counsel);

MESSRS. GROSS & GROSS, Solicitors for Defendant  
(Thomas G. Haight, Esq., of counsel).

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LYNCH, *District Judge.*

Because of my desire to dispose of several matters as quickly as possible, I shall but briefly state my conclusions in this matter. I have devoted considerable time to reading and digesting the voluminous affidavits, as well as considering the arguments advanced. I regret that my time is so limited that I am unable to dictate a memorandum of greater length.

The defendant corporation was engaged primarily in the manufacturing and selling of briquettes, a substitute for coal. Many thousands of shares of its stock were sold to the public. The company, after operating for at least two years, was not a success. At the time of the filing of the bill it owed some debts which it was without sufficient funds to pay and a mortgage on its property was under foreclosure. Not only that, assuming the making of briquettes to be a profitable business, great losses were likely to be sustained by the stockholders because of a contemplated contract with one Briquette Company, a common law trust, whereunder the defendant company was preparing to part with the right to manufacture and sell briquettes outside of the State of New Jersey, for a plainly inadequate consideration. So this action based upon the statute of New Jersey was begun.

The bill alleges, among other things, that the company's "business has been and is being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders, and that a further prosecution by the corporation of its said business would tend to the sacrifice, injury and depreciation of the assets of the corporation and the rights of the stockholders and creditors."

An examination of the statements submitted showing the conduct of the business of the company and the assets, liabilities, etc., cannot help but convince one that this briquette business *had been and was being* conducted at a net loss.

Counsel for the defendant company must have had that in mind when at the oral argument he stated:

"They (the affidavits) prove that this thing has not reached its perfection until just recently. Now, then, having just reached its perfection, we are on the threshold, *we think*, of success. Now, then, I sympathize with these stockholders who

have invested their money in this concern, and I sympathize with their desire and anxiety to see that their investment is protected. We intend to see that their investment is protected as much as we can."

It may be, although I am not attempting to decide it, that the Court is without jurisdiction to appoint a permanent receiver on a preliminary hearing of this sort. But, in the instant situation, we have *ex parte* affidavits submitted by the defendant which in themselves justify the conclusion that, pending the hearing on the bill and answer, it would be wise, for the protection of stockholders, creditors and others, to place the business and property of the company in the hands of an officer of the court. It strikes me, that the dissipation of the company's property rights by contracts, agencies or otherwise should be guarded against. Under such circumstances, particularly where the facts are confirmed by defendant's own showing, I think the Court is justified in continuing, pending final hearing, the receivership.

If, as is claimed, the company is *now* in a position to do business profitably because its plant is perfected *and also* because the coal strike is likely to create greater demand for its product, the temporary receivers should consider the advisability of manufacturing and selling briquettes—of continuing the business. If it should be considered advisable to do this, they might obtain, if possible, the co-operation of the officers of the defendant *for that purpose*. The receivers would then in a short time be in a position to advise the Court more fully as to the future prospects of the defendant's business.

The temporary receivers will be continued until the further order of the Court.

**ORDER.**

(Filed July 13, 1922.)

It appearing that a bill of complaint was filed in this case by the complainant for, among other things, the appointment of receivers of the defendant, the Burnrite Coal Briquette Company, and that the defendant, the Burnrite Coal Briquette Company has appeared and answered the bill, and that the complainant and defendant have presented affidavits upon the merits of the case, and that an order to show cause made herein upon the eleventh day of May, 1922, has been served as in said order directed, and the matter coming on to be heard before the Court, upon the bill, and answering affidavits presented by the respective parties and other proof submitted by the respective parties, and the matter having been argued by Joseph L. Smith, Esq., and Merritt Lane, Esq., of counsel with the complainant, and Isaac Gross, Esq., and Thomas Haight, Esq., of counsel with the defendant, and the Court having also heard intervening creditors and stockholders by their respective counsel, and the Court being now satisfied from the said pleadings, proofs and arguments, that the business of the defendant corporation has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and that its business cannot be conducted with safety to the public and advantage to the stockholders, and that the business of the defendant corporation is in such a condition as to, in the interests of the creditors and stockholders, and in order to protect the equitable rights of the creditors and stockholders, require the continuance of the receivership established by this court, by the order of May 11, 1922, and that the relief hereinafter granted, be granted to the complainants.



It is thereupon, on this thirteenth day of July, 1922, ORDERED, ADJUDGED AND DECREED that the order of this Court made upon the eleventh day of May, 1922, be and the same is hereby made absolute, and

It is further ORDERED, ADJUDGED AND DECREED that Alfred L. Kirby, of Newark, N. J., and John P. Duffy, of Elizabeth, N. J., be and they hereby are continued as receivers of the said defendant corporation with all the powers granted to them by the order of May 11, 1922, and also with power specifically to demand, sue for, collect, receive and take into their possession, all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description, of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in their discretion to compromise and settle with any debtor or creditor of the corporation or with persons having possession of its property or in any way responsible at law or in equity to the corporation, upon such terms, and in such manner as they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any persons, to allow such set-offs in favor of such persons, in all cases in which the same should be allowed, according to law and equity, and with full power to sell, convey and assign all the said estate, rights and interest except only that the said receivers shall not sell the assets of the said defendant corporation as a whole or for the purpose of ultimate liquidation except upon the order of this Court to be made upon such notice as this Court may direct, at the time of the making of the application for said order to this court; this exception not in any wise to restrict the powers of the receivers to dispose of the assets of the company in the ordinary course of the business, and

It is further ORDERED that the injunctive provisions of the order of May 11, 1922, be continued in full force and effect, and that the said defendant, its officers and agents, desist and refrain until the further order of this Court from exercising any of its privileges or franchises, and from collecting or receiving any debts or assigning or transferring any of its assets, moneys, lands, tenements or effects, except to the receivers who may be appointed by this Court, and

It is further ORDERED that the said receivers are in their discretion to continue the business of the defendant corporation with full power and authority to make and execute any and all contracts or agreements which in their judgment may be beneficial to the defendant company, and that said receivers may pay to themselves a salary not to exceed \$50 a week, but that the amounts so received by them are to be considered by the Court in fixing their allowances, and

It is further ORDERED that the bond heretofore given by the receivers be continued and that the receivers do report to this Court fully in the premises within such time as may be reasonable, and that this order continue in full force and effect until further order shall be by this Court made.

CHARLES F. LYNCH,

*Judge.*

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ORDER CONTINUING RECEIVERSHIP.  
(Filed December 22, 1922.)

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This matter being opened to the court by Joseph L. Smith and Merritt Lane, solicitors for and of counsel with complainant, in the presence of McCarter & English, solicitors for and of counsel with the defendant, and the defendant consenting, in open court, that the final hearing of this cause be upon the affidavits

filed herein upon each side, and the matter coming on for final hearing by consent, and the court having considered the pleadings, and the proofs and the argument of counsel, and being of the opinion from the said pleadings, proofs and arguments that the affairs of said corporation have been grossly mismanaged by the president and by the board of directors, and that the control of a majority of the voting stock of said company is in the officers and directors who have been mismanaging the said corporation, and that, within the meaning of an act of the State of New Jersey entitled, "An act concerning corporations," revision of 1896, and its amendments and supplements, the business of the corporation has been and is being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders under the present management, and that, for the reasons aforesaid, the receivership herein established should be continued, if not appearing to the court that the corporation is insolvent:

It is, on this twenty-second day of December, 1922, ORDERED, ADJUDGED and DECREED that the business of the said corporation has been grossly mismanaged, and has been and is being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders so that its business cannot be conducted with safety to the public and advantage to the stockholders, under the present management, and that the receivership established in this cause should be continued until further order by this court made, and that all of the injunctive relief contained in orders by this court heretofore made be continued in full force and effect.

And it is further ORDERED, ADJUDGED and DECREED that the said defendant corporation is not insolvent.

And it is further ORDERED, ADJUDGED and DECREED that the said corporation, its officers and agents, do desist and refrain from exercising any of its privileges and franchises, and from collecting or receiving, any debts, and paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects except to a receiver appointed by the court, until the court shall otherwise order.

And it is further ORDERED, ADJUDGED and DECREED that the said Alfred L. Kirby and John P. Duffy, heretofore named as receivers herein, be continued as such receivers with all the powers vested in them by previous orders by this court made, and with all of the powers conferred upon receivers by an act of the State of New Jersey, entitled, "An act concerning corporations," revision of 1896, its amendments and supplements thereto, and that the receivers continue to operate the business of said defendant corporation upon a re-organization or re-adjustment of the affairs of said corporation or such disposition as may be hereafter directed to be made of the affairs of said corporation by this court, and that the said receivers and any party in interest may have leave to apply to this court for such other and further relief as may be proper or necessary.

CHARLES F. LYNCH,  
*Judge.*

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### ASSIGNMENT OF ERRORS.

(Filed January 8, 1923.)

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Now comes the defendant, Burnrite Coal Briquette Company, a corporation, appellant, and in connection with its petition for appeal, says that in the record proceedings, and in the final decree rendered and entered herein on the twenty-second day of December, 1922, manifest error has intervened to its prejudice, to wit:

1. The Court erred in taking jurisdiction of this suit, and making the order made and entered on the eleventh day of May, 1922.
2. The Court erred in appointing receivers in and by its order made and entered May 11, 1922.
3. The Court erred in decreeing the injunctive relief decreed in and by its order made and entered on May 11, 1922.
4. The Court erred in taking or retaining jurisdiction of this cause, and making and entering the order made and entered on July 13, 1922.
5. The Court erred in continuing Alfred L. Kirby and John P. Duffy as receivers of the defendant in the order made July 13, 1922, and in giving the said receivers in and by the said order the additional powers therein conferred upon them.
6. The Court erred in continuing in the order made and entered July 13, 1922, the injunctive provisions of the order of May 11, 1922.
7. The Court erred in decreeing in and by its order made and entered July 13, 1922, as follows:  
"That the said defendant, its officers and agents, shall desist and refrain, until the further order of this Court, from exercising any of its privileges and franchises, and from collecting or receiving any debts or assigning or transferring any of its assets, moneys, lands, tenements, effects, except to the receivers who may be appointed by this Court."
8. The Court erred in making and entering the final decree made and entered on the twenty-second day of December, 1922, and called order continuing re-

ceivers, instead of dismissing the bill, and discharging the receivers.

9. The Court erred in decreeing in its final decree made and entered on the twenty-second day of December, 1922, as follows:

“That the receivership established in this cause should be continued until further order by this Court made, and that all of the injunctive relief contained in orders by this Court heretofore made be continued in full force and effect.”

10. The Court erred in decreeing in its final decree made and entered on the twenty-second day of December, 1922, as follows:

“That the said corporation, its officers and agents do desist and refrain from exercising any of its privileges and franchises, and from collecting or receiving, any debts, and paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects except to a receiver appointed by the Court, until the Court shall otherwise order.”

11. The Court erred in decreeing in its final decree made and entered on the twenty-second day of December, 1922, as follows:

“That the said Alfred L. Kirby and John P. Duffy, heretofore named as receivers herein, be continued as such receivers with all the powers vested in them by previous orders by this Court made, and with all of the powers conferred upon receivers by an act of the State of New Jersey, entitled ‘an act concerning corporations,’ revision of 1896, its amendments and supplements thereto, and that the receivers continue to operate the business of said defendant corporation upon a reorganization or re-adjustment of the affairs of said corporation or such disposition as may be hereafter directed to be made of the affairs of said corporation by this Court.”

12. The said decree is against the manifest weight of the evidence.

13. The said decree is contrary to law.

WHEREFORE the defendant-appellant prays that the decree of the District Court of the United States for the District of New Jersey made and entered on the twenty-second day of December, 1922, may be reversed, set aside, and for nothing holden, with directions to the said Court to dismiss the complainant's bill of complaint, and discharge the receivers.

McCARTER & ENGLISH,  
*Solicitors for Defendant-Appellant.*

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PETITION FOR APPEAL.

(Filed January 8, 1923.)

*To the Honorable the Judges of the District Court of  
the United States for the District of New Jersey:*

The above-named Burnrite Coal Briquette Company, defendant, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the twenty-second day of December, 1922, does hereby appeal from the said decree to the Circuit Court of Appeals for the Third Circuit, for the reasons set forth in the assignment of errors filed herewith, and it prays that its appeal be allowed, and that citation be issued, as provided by law, and that the amount of security to be required should be fixed by the order allowing this appeal.

McCARTER & ENGLISH,  
*Solicitors of Defendant.*

Appeal allowed upon giving a bond as required by law for the sum of \$250.

CHARLES F. LYNCH,  
*Judge.*

## CITATION.

(Filed January 13, 1923.)

UNITED STATES OF AMERICA, ss.:

*To Edward G. Riggs and Alfred L. Kirby and John P.  
Duffy, as Receivers of the Burnrite Coal Briquette  
Company,*

## GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Third Circuit in the city of Philadelphia, within thirty days from the date hereof, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the District of New Jersey, wherein Burnrite Coal Briquette Company is appellant and you are respondents, to show cause, if any, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS THE HONORABLE CHARLES F. LYNCH,  
Judge of the District Court of the United States for  
the District of New Jersey, this twelfth day of Jan-  
uary, 1923.

CHARLES F. LYNCH,

*District Judge.*

## PRÆCIPE FOR RECORD.

(Filed January 12, 1923.)

The Clerk of the Court is hereby directed to prepare and certify a transcript of the record in the above-entitled cause for the use of the Circuit Court of Appeals for the Third Circuit, by including therein the following:



Transcript of docket entries.

Bill of complaint and affidavits.

Order appointing receivers, filed May 11, 1922.

Petition by defendant, and affidavits thereto annexed, filed May 18, 1922.

Order to show cause made thereon, filed May 18, 1922.

Affidavits for complainant, filed May 22, 1922.

Order of continuance, filed May 29, 1922.

Answer, filed June 5, 1922.

Affidavits for complainant (three different sets), filed June 6, 1922.

Affidavits for complainant (two different sets), filed June 12, 1922.

Affidavits for defendant (three different sets), filed June 19, 1922.

Affidavits for complainant, filed June 28, 1922.

Opinion of Lynch, J., filed July 11, 1922.

Order continuing receivers, etc., filed July 13, 1922.

Order continuing receivers, etc., filed December 22, 1922.

Petition for appeal, filed January 8, 1923.

Assignment of errors, filed January 8, 1923.

Citation.

This præcipe.

McCARTER & ENGLISH,

*Solicitors for Appellant.*

Dated, January 12, 1923.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE THIRD CIRCUIT.

---

March Term, 1923. No. 2977 (List No. 21).

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*Burnrite Coal Briquette Co.,*  
Appellant,

v.

*Edward G. Riggs, et al., Receivers,*  
Appellees.

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And afterwards, to wit, on the eleventh day of April, 1923, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the eleventh day of August, 1923, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE THIRD CIRCUIT.

---

March Term, 1923. No. 2977.

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*Burnrite Coal Briquette Co.,*  
Appellant.

v.

*E. G. Riggs, et al., Receivers Burnrite Coal Briquette  
Company,*  
Appellees.

---

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW JERSEY.

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OPINION OF THE COURT.  
(Filed August 11, 1923.)

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Before BUFFINGTON, WOOLLEY and DAVIS, *Circuit  
Judges.*

BUFFINGTON, *Circuit Judge.*

The appointment of receivers for a corporation is a matter of grave concern, because it takes its property, and the management thereof, out of the hands of those in whom the law vested it. It follows, therefore, that when a court exercises this power, its warrant so to do must be shown. Such action, over the protest and objection of the company, the District Court of New Jersey took in the appointment of receivers for the Burnrite Coal Briquette Company, a corporation of the State of Delaware, which Company that Court at the same time found was not insolvent. Such being the case, the basic and controlling question here involved is: Did the District Court of the United

States for the District of New Jersey have jurisdiction to appoint receivers for a solvent foreign corporation? In our opinion, it had not, and the reason for so holding is that the law of New Jersey, as interpreted by its highest tribunal, has given no such power over foreign corporations to its own local courts, and the jurisdiction of the Court below was in that particular determined by that of the State courts. *Clark v. Smith*, 38 U. S. 195 and citations in 3d Rose's Notes (Rev. Ed.).

Turning, then, to the statute law of New Jersey and the interpretation thereof by its highest court, we find the act of that State authorizing its courts to appoint receivers for foreign corporations doing business in the State, is the law of 1896 as amended in 1912, and which, so far as here pertinent, reads, Section 65, as follows: "Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors, or stockholders, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances, apply to the Court of Chancery for a writ of injunction and the appointment of a receiver or receivers," and Section 96 which provides: "Foreign corporations doing business in this state shall be subject to the provisions of this Act, so far as the same can be applied to foreign corporations."

From a study of the New Jersey cases, a list of certain of which is printed in the margin,\* we are of opinion that in the case of foreign corporations the

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\**National Trust Co. v. Miller*, 33 N. J. E. 155 (1880); *Mischin v. Second National Bank*, 36 N. J. E. 436 (1883); *Jackson v. Hooper*, 76 N. J. E. 185 (1909); *Albert v. Clarendon*, 53 N. J. E. 623 (1891); *Atwater v. Baskerville*, 89 N. J. E. 121 (1918), affirmed 90 N. J. E. 275; *Clark v. Painted Post Lumber Co.*, 89 N. J. E. 409 (1918); *Eckrode v. Endurance Tire Co.*, 90 N. J. E. 129 (1918); *Goff v. Goff Electric Co.*, 89 N. J. E. 258.

*sine qua non* of jurisdiction over them in the state courts to warrant the appointment of receivers, is insolvency; and where, as here, the corporation was solvent, the state courts of New Jersey are without jurisdiction to appoint receivers for foreign corporations, even though they might have jurisdiction to name receivers for domestic corporations on the other statutory recited grounds. In other words, these "other statutory grounds" applicable to domestic corporations, fall within the prohibition of the quoted statute as not being matters which "can be applied to foreign corporations."

Commenting on the original Act, it was said in *National Trust Co. v. Miller*, 33 N. J. E. 155: "By express provision, foreign corporations, doing business in this State, are made subject to all the provisions of our statute concerning corporations, so far as the same can be applied to foreign corporations. Rev. 196 Sec. 103. The legislative design was, unquestionably, to confer upon this court the same powers, in respect to insolvent corporations, created by foreign jurisdictions, having property in this State, that it exercised over insolvent domestic corporations, so far, at least, as the exercise of such powers was necessary to the recovery of any assets whether legal or equitable, which should go in discharge of debts." In *Mischin v. Second National Bank*, 36 N. J. E. 436, it is said: "Obviously, there are provisions of the Act which cannot be applied to such corporations; for example, this Court cannot hinder such corporations from exercising their franchises, except as it may enjoin them from exercising them in this State. It can sequester their property here and administer it for the benefit of creditors and stockholders, but can do little more." Substantially and to the same effect are the cases decided since the Amendment. In *Goff v. Goff Electro Co.*, 89 N. J. E. 258 (1918), the Court in almost the exact lan-

guage, followed what was said in *Mischin v. Second National Bank*, *supra*. The appellees rely upon *Atwater v. Baskerville*, 89 N. J. E. 121, decided by Vice-Chancellor Lane after the amendment of 1912 and affirmed by the Court of Errors and Appeals, 90 N. J. E. 275. In his opinion the Vice-Chancellor held generally that under the New Jersey Statute a receiver may be appointed for a corporation on the ground of insolvency or on any other statutory ground; but the particular matter decided, and affirmed, was the valid appointment of a receiver, not because the corporation's business was "being conducted at great loss," etc., but on the ground that the corporation was insolvent and that it had fraudulently conveyed its property. We are of opinion that the *Atwater* decision does not rule this case, where, we may also remark, no question of fraud is involved.

V It thus appearing that under the decisions of the highest tribunal of New Jersey, courts of that State had no statutory authority to appoint receivers for a solvent foreign corporation, it follows the United States District Court of New Jersey had no such authority and should have refused to entertain this bill.

This basic jurisdictional question being determinative of the case, it follows that the terms of the order, which the Court made in a case when the Court had no power to make any order at all, constitute matters to which we need not advert. The case will, therefore, be remanded to the Court below, with instructions to dismiss the bill on the ground that the company in question being a solvent foreign corporation, the Court below had no jurisdiction to appoint receivers.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE THIRD CIRCUIT.

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March Term, 1923. No. 2977 (List No. 21).

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*Burnrite Coal Briquette Company,*  
Appellant.

v.

*Edward G. Riggs, Alfred L. Kirby and John P. Duffy,*  
*Receivers of the Burnrite Coal Briquette Company,*  
Appellees.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF NEW JERSEY.

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ORDER REVERSING DECREE.  
(Filed August 11, 1923.)

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This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby reversed with costs, and the cause remanded to the said District Court with instructions to dismiss the bill on the ground that the company in question being a solvent foreign corporation, the Court had no jurisdiction to appoint receivers.

J. WARREN DAVIS,  
*Circuit Judge.*

Philadelphia, August 11, 1923.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE THIRD CIRCUIT.

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*Edward G. Riggs, et als,*  
Complainants-Respondents.

v.

*Burnrite Coal Briquette Company,*  
Defendant-Appellant.

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ON APPEAL FROM DISTRICT COURT OF THE UNITED  
STATES, DISTRICT OF NEW JERSEY.

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NOTICE.

(Filed November 22, 1923.)

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SIRS :

PLEASE TAKE NOTICE that on Monday, the third day of December next, at ten-thirty o'clock in the forenoon, at the Post Office Building in the city of Philadelphia, Pa., or as soon thereafter as we can be heard, we shall apply to the above entitled court to fix the form of decree to be entered in the United States District Court for the District of New Jersey in above matter, and to determine the questions with respect thereto, referred to said court by the United States District Court for the District of New Jersey, at which time and place you may be present, if you see fit.

At that time we shall refer to the pleadings, affidavits and exhibits filed with the Court of Chancery of the State of New Jersey in the suit of Edward G.



Riggs, *et als*, complainants, against the Burnrite Coal Briquette Company, defendant, now pending.

Respectfully yours,

McCARTER & ENGLISH,  
*Solicitors for Appellant.*

Dated November 20, 1923.

To:

MERRITT LANE and  
JOSEPH L. SMITH, Esqs.,  
*Solicitors of Respondents.*

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Service of the within notice is hereby acknowledged this twenty-first day of November, 1923.

MERRITT LANE and  
JOSEPH L. SMITH,  
*Solicitors of Respondents.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE THIRD CIRCUIT.

---

*Edward G. Riggs,*

Complainant,

v.

*The Burnrite Coal Briquette Company, a Corporation,*  
Defendant.

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ON THE PETITION OF THE HONORABLE CHARLES F. LYNCH,  
DISTRICT JUDGE.

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ORDER PER CURIAM DISMISSING PETITION  
FOR FORMATION OF DECREE IN DISTRICT  
COURT.

(Filed January 17, 1924.)

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*Per Curiam.*

This is a petition seeking direction by this court as to the manner in which its mandate in the above entitled cause should be obeyed. It is in the nature of the proceeding by which, under authority of Section 239 of the Judicial Code, this Court may certify to the Supreme Court questions or propositions of law concerning which it desires the instruction of that court. The matter came on for hearing without objection to the procedure. Being without authority, statutory or otherwise, to entertain the petition (though feeling keenly the position of the District Court), we are constrained to enter an order of dismissal.

Accordingly, the petition is dismissed.

VICTOR B. WOOLLEY, C. J.

MANDATE.

(Filed October 5, 1923.)

UNITED STATES OF AMERICA, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,  
*To the Honorable the Judges of the District Court of  
the United States for the District of New Jersey,*

GREETING:

WHEREAS, lately in the District Court of the United States for the District of New Jersey, before you or some of you, in a cause between Burnrite Coal Briquette Company (defendant below), appellant, and Edward G. Riggs, Alfred L. Kirby and John P. Duffy, receivers of the Burnrite Coal Briquette Company (plaintiffs below), appellees, a decree was entered in the said District Court on the twenty-second day of December, 1922, which order is of record in the office of the clerk of the said District Court, to which reference is hereby made, and the same is hereby expressly made a part hereof.

as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of an appeal agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

AND WHEREAS, in the present term of March, in the year of our Lord one thousand nine hundred and twenty-three, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and

the same is hereby reversed, with costs, and the cause remanded to the said District Court with instructions to dismiss the bill on the ground that the company in question being a solvent foreign corporation, the Court had no jurisdiction to appoint receivers; and that the said appellant, Burnrite Coal Briquette Company, recover against the said appellees, Edward G. Riggs, Alfred L. Kirby and John P. Duffy, receivers of the Burnrite Coal Briquette Company, in the sum of five hundred and fifty-five dollars and thirty cents (\$555.30) for its cost herein expended, and have execution therefor;

Philadelphia, August 11, 1923.

You therefore, are hereby commanded that such execution and further proceeding be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS, the HONORABLE WILLIAM HOWARD  
TAFT, Chief Justice of the Supreme Court  
(Seal) of the United States, at Philadelphia, the  
fifth day of October, in the year of our  
Lord one thousand nine hundred and  
twenty-three (1923).

Costs of Burnrite Coal Briquette Company:

Clerk,	\$104.05
Printing Record,	\$431.25
Attorney	\$20.00
	<hr/>
	\$555.30

SAUNDERS LEWIS, JR.,  
*Clerk of the U. S. Circuit Court  
of Appeals, Third Circuit.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE THIRD CIRCUIT.

March Term, 1923. No. 2977.

COSTS OF BURNRITE COAL BRIQUETTE CO.

1923 March Term—Docketing cause and filing record, <b>\$5.00</b> ; appearance, <b>.25</b> ; filing precipe and receipt, ; filing papers, <b>8.00</b> ; filing motion, <b>.25</b> ; filing briefs, <b>\$5.00</b> ; submission <b>.20</b> ; order, <b>.20</b> ; ..... continuance, <b>.25</b> .	5.25 8.00 5.00
1923, March Term — Transfer, <b>\$1.00</b> ; appearance, <b>.25</b> ; filing precipe and receipt, ; filing papers, ; filing motion, <b>.25</b> ; filing briefs, <b>\$5.00</b> ; submission, <b>.20</b> ; order, <b>.20</b> .... ....., continuance, <b>.25</b> .	1.00 .25 5.00
19 ..... Term—Transfer, <b>\$1.00</b> ; appearance, <b>.25</b> ; filing precipe and receipt, .....; filing papers, .....; filing motion, <b>.25</b> ; filing briefs, <b>\$5.00</b> ; submission, <b>.20</b> ; order, <b>.20</b> ; ....., continuance, <b>.25</b> .	
1923, March Term — Transfer, <b>\$1.00</b> ; appearance, <b>.25</b> ; filing precipe and receipt, ..... filing papers, <b>\$1.75</b> ..... filing briefs, <b>\$5.00</b> ; argument, <b>.20</b> ; submission, <b>.20</b> ; judgment, <b>\$1.00</b> ; filing same, <b>.25</b> ; recording, <b>.40</b> ; mandate, <b>\$5.00</b> ; preparing record for printer, etc., <b>\$65.75</b> ; cost of printing record, <b>\$431.25</b> ; attorney's docket fee, <b>\$20.00</b> ; costs and copy, <b>.20</b> .....	1.75 5.20 1.25 5.40 65.75 431.25 20.20
	555.30
Fee Book....., page .....	

Test: SAUNDERS LEWIS, JR.,  
Clerk Circuit Court of Appeals,  
Third Circuit.

## CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,  
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.*  
THIRD JUDICIAL CIRCUIT.

I, SAUNDERS LEWIS, JR., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in this court in the case of: Burnrite Coal Briquette Co., appellant, v. E. S. Riggs, *et al.*, receivers, appellees, No. 2977, on file and now remaining among the records of the said court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this  
day of

in the year of our Lord one thousand nine hundred and twenty-five, and of the Independence of the United States the one hundred and fiftieth.

*Clerk of the U. S. Circuit Court  
of Appeals, Third Circuit.*

IN THE DISTRICT COURT OF THE UNITED STATES,  
FOR THE DISTRICT OF NEW JERSEY.

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IN EQUITY.

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*Edward G. Riggs,*  
Complainant,

v.

*Burnrite Coal Briquette Company, a Corporation,*  
Defendant.

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NOTICE.

(Filed October 10, 1923.)

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Sir:

Take notice that on Monday, the fifteenth day of October, 1923, at half-past ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, we shall move the Court at the Chamber of Commerce Building, Branford Place, Newark, to enter a decree on the mandate from the Circuit Court of Appeals in this cause, and we shall present a decree of which a copy is served on you herewith.

Yours respectfully,

McCARTER & ENGLISH,  
*Solicitors of Defendant.*

To

JOSEPH L. SMITH, ESQUIRE,  
*Solicitor of Complainant  
and of Receivers.*

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Service of the within notice and of a copy of the proposed decree is acknowledged this ninth day of October, 1923.

JOSEPH L. SMITH,  
*Solicitor of Complainant  
and of Receivers.*

## OPINION.

(Filed January 21, 1924.)

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MERRITT LANE, Esq., and JOSEPH L. SMITH, Esq.,  
solicitors for the complainant;

MESSRS. McCARTER & ENGLISH, solicitors for the  
defendant (*George W. W. McCarter, Esq., of  
counsel*).

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LYNCH, *District Judge*.

Receivers for the defendant corporation were appointed by this Court in May, 1922. Under various orders of this Court they have ever since conducted the business of the corporation. They have contracted debts, borrowed money on receivers' certificates, paid taxes and discharged many other duties incidental to their management and control of that business. The order appointing the receivers was not appealed from. Nor were any of the orders relating to the operation of the business by the receivers questioned by appeal. In this Court the point of lack of jurisdiction to make these appointments or orders was never raised or argued.

In December, 1922, this Court made an order in certain contempt proceedings *which was appealed*. Upon the argument thereof in the Circuit Court of Appeals, the question of the jurisdiction of this Court to appoint receivers was for the first time raised and argued by counsel—counsel who had not appeared in the cause prior to these contempt proceedings. As a jurisdictional question may be raised at any time, the Circuit Court of Appeals very properly considered that question. It decided that this Court had no jurisdiction to appoint receivers of a solvent foreign corporation. 291 Fed. 754. The point raised by appeal was not even referred to. The opinion of the Circuit Court of Appeals, and its mandate, directed this Court



to dismiss the bill, but both were silent with respect to any terms or conditions of dismissal. The receivers, who, in good faith and under court orders, had entered into obligations, thereupon appealed to this Court for protection. They insisted that before the property of the corporation should be taken from them, they should be permitted to account and have provision made for unpaid obligations entered into, fees, allowances, etc. The defendant replied that the mandate of the Circuit Court of Appeals should be promptly carried out by a dismissal of the bill without accounting or adjustment of any kind prior to such action. This Court, being perplexed, petitioned the Circuit Court of Appeals for further instructions in the premises.

The petition, after setting forth facts, concluded as follows :

“I, therefore, as aforesaid, being uninstructed by your Honors in the premises and desirous of fully carrying out the instructions of your Honors as given, do ask your Honors, if agreeable to your Honors, to instruct me as your Honors deem meet, what order or decree I should make *or whether I should exercise my own judgment upon what order should be made under all of the circumstances.*

Respectfully sent up.”

The Circuit Court of Appeals received this petition or certificate, considered it and heard argument of counsel with respect thereto. The response of the Court was the following opinion which has just been rendered :

“**PER CURIAM.** This is a petition seeking direction by this court as to the manner in which its mandate in the above entitled cause should be obeyed. It is in the nature of the proceeding by which, under authority of Section 239 of the Judicial Code, this court may certify to the Supreme Court questions or propositions of law concerning which it desires the instruction of that court.

The matter came on for hearing without objection to the procedure. Being without authority, statutory or otherwise, to entertain the petition (though feeling keenly the position of the District Court), we are constrained to enter an order of dismissal.

Accordingly, the petition is dismissed."

This Court will therefore be obliged to exercise its own independent judgment as to the terms and conditions under which the receivers, who have been running the business of the defendant corporation for twenty months, should relinquish possession.

As a general rule when a court appoints receivers of a corporation without jurisdiction to do so, the costs and expense of such receivership are not chargeable against the corporation but must be recovered, if at all, from the plaintiff in the suit. That is the general rule, but like all rules, it has exceptions and I think the situation presented here is such an exception. The defendant corporation, by general appearance, waived its right to attack the jurisdiction on the ground of diversity of citizenship and as it did not appeal, when it could have, from the order appointing receivers and the other orders incidental to the conduct of the business of the corporation, but stood by and saw the receivers borrow money and spend it upon its property, it seems to me that there was an acquiescence by the corporation in all of these proceedings. In other words, this case turns on the acquiescence of the corporation to what was done which takes it out of the general rule disallowing fees and payments of debts when the bill is dismissed for want of jurisdiction.

Under the circumstances, therefore, this Court will order an account, arrange for the payment of debts and allowance of fees, either from the corporation's funds or from funds which the corporation may supply to reimburse the expenditures of the receivers. When this has been done, then the bill will be dismissed.

ORDER THAT RECEIVERS ACCOUNT.  
(Filed January 24, 1924.)

Upon opening the matter this day to the Court by Messrs. McCarter & English, of counsel with the defendant, and it appearing that the said defendant took an appeal from the decree made in this cause on the twenty-second day of December, 1922, to the United States Circuit Court of Appeals for the Third Circuit, and that the said appeal has been determined by the said Circuit Court of Appeals, and the proceedings have been remitted to this Court, and on reading the mandate from the said Circuit Court of Appeals, whereby it appears that it was ordered and decreed by the said Court that the said decree of this Court be in all things reversed, set aside, and for nothing holden, with instructions to this Court to dismiss the bill of complaint, on the ground that the defendant being a solvent foreign corporation, this Court had no jurisdiction to appoint receivers, and notice of this application having been given to the complainant, and the receivers, and this Court being of opinion that the receivers should account before the bill be dismissed.

It is, thereupon, on this twenty-fourth day of January, 1924, ORDERED that Alfred L. Kirby and John P. Duffy do account to this Court, as receivers of the defendant above-named, within fifteen days from the date hereof, and within the same time do serve a copy of their account upon the solicitors of the defendant; and that the defendant have ten days after the date of service on their solicitors of a copy of the said account, to file exceptions thereto; and that the defendant do, within said time, serve a copy of any exceptions so filed by it upon the solicitor of the complainant; and that the hearing on the said account, and on the exceptions thereto, if any, may be brought on by either

party upon five days' notice given after either the service of such exceptions, as aforesaid, or after the expiration of the time within which exceptions may be filed and served.

AND IT IS FURTHER ORDERED that all further equity abide the order of this Court upon the hearing on the said account and exceptions thereto.

CHARLES F. LYNCH, J.

Dated January 24, 1924.

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#### REPORT AND ACCOUNT OF RECEIVERS.

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A. L. KIRBY and JOHN P. DUFFY, receivers;  
MERRITT LANE and JOSEPH L. SMITH, solicitors for  
and of counsel with the receivers.

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February 7, 1924.

*To the Honorable Judges of the United States District  
Court, District of New Jersey:*

Your receivers, Alfred L. Kirby and John P. Duffy, respectfully report:

They were appointed receivers for the Burnrite Coal Briquette Co. on May 11, 1922; immediately took charge and have actually conducted the affairs of the company as a going concern since July 24, 1922.

We first engaged Messrs. Puder and Puder, certified public accountants, to audit the books and at the same time we engaged Mashek Engineering Company to report on the physical condition of the plant and machinery.

The outstanding facts of the accountants' report were:

*First.*—That there were only \$191.62 cash on hand and in bank.

*Second.*—Inventory on hand consisting of finished product and raw materials of an estimated value of \$6919.87.

*Third.*—Accounts receivable \$15,359.13, of which the receivers have since been able to collect only \$2388.02.

*Fourth.*—That the original cost of all of the fixed assets of the company including land, buildings, machinery, etc., as taken from the books of the company, amounted to \$398,719.49.

As against the above the report further showed liabilities of:

*First.*—Notes and accounts payable, script dividend due November 15, 1921, unpaid dividends on preferred stock, accrued payroll and partial payments on mortgage bond subscriptions, aggregating \$27,191.82.

*Second.*—Indebtedness to the president, F. M. Crossman, his wife, Denise Crossman, and two sales companies controlled by F. M. Crossman, namely, Shamokin Valley Coal Sales Company and Burnrite Coal Service Corporation, amounting to \$36,415.90. This indebtedness was claimed to be secured by \$48,600 worth of the company's first mortgage bonds taken by F. M. Crossman. The board of directors at a meeting held on the fifteenth day of March, 1922, two months prior to appointment of receivers, authorized the issue of \$28,600 worth of bonds to F. M. Crossman as collateral security for the above indebtedness and \$20,000 worth of said bonds were taken and held by F. M. Crossman without authorization.

*Third.*—The vacant land owned by the company and adjoining the plant proper was encumbered by a purchase mortgage of \$2350.

*Fourth.*—The plant proper was encumbered by a first mortgage bond issue of \$100,000, of which \$3500 worth were sold for cash and \$48,600 worth taken by F. M. Crossman as aforesaid.

*Fifth.*—That the company had a capital liability of \$1,411,802.

*Sixth.*—That the total deficit on May 11, 1922, was \$1,123,817.73.

*Seventh.*—That the company had from the very beginning operated at great loss—in that for the year 1920 the actual operating loss was \$53,071.88; for the year 1921, \$66,390.22; and from January 1, 1922, to May 11, the date on which receivers took charge, \$14,261.84. These figures represent the actual operating loss and do not include items of reserve for depreciation.

The Mashek Engineering Company reported the plant to be in a very rundown condition and set forth that an expenditure of \$10,000 to \$15,000 was immediately necessary to put the plant in workable condition.

On May 18th, on application by the company, this Honorable Court issued an order restraining the receivers from taking any further action with respect to the property of the company other than the retention of the custody thereof, and this restraining order was in force until July 11th, therefore practically two months in which the work of overhauling the plant could have been done, were lost to the receivers.

In the memorandum by Judge Charles F. Lynch, filed July 11, 1922, he states:

"If, as is claimed, the company is Now in a position to do business profitably because its plant is perfected AND ALSO because the coal strike is likely to create greater demand for its product, the temporary receivers should consider the advisability of manufacturing and selling briquettes—of continuing the business. If it should be considered advisable to do this, they might obtain, if possible, the co-operation of the officers of the defendant FOR THAT PURPOSE."

Influenced by affidavits submitted to the Court by the officers of this corporation, as well as by oral argument in court by counsel for the corporation to the effect that this was the great opportunity to rehabilitate the business, and also on account of the coal strike which was then in its fourth month, the receivers elected to operate the plant and continue the business.

Thereupon we acted upon the suggestion of the Court and addressed a letter to each of the officers and members of the board of directors of the company requesting them to meet with the receivers at the office of the company for the purpose of securing their co-operation. Only two of the officers appeared on the date set, namely, Mr. Yorston, secretary, and Mr. Diss, vice-president. The other officers and directors did not appear, neither did they give any reason for not attending the meeting. Co-operation, therefore, with the officers, was out of the question.

That the receivers did operate successfully and at a profit, while there was a demand for the product, is evidenced by the financial statement of December 31, 1922, showing a net operating profit for the entire year of 1922 of \$14,592.22. In arriving at this figure we did not take into account an item for depreciation. However, the receivers had operated the plant only

five months and had absorbed the loss of \$14,261.84 by the company for the period of January 1 to May 11, 1922.

When the receivers took charge, the plant was insured against fire loss in an amount not exceeding \$10,000 and included in our operating expenses for the year 1922 is an item of \$3959.11 paid by the receivers in insurance premiums so that this plant would be properly covered.

A far better showing by the receivers would have been made were it not for the continuous opposition of the officers of this corporation and we referred particularly to:

*First.*—The restraining order of May 18 preventing the receivers from preparing the plant for operation in the months of May, June and July when there was practically no demand for the product. The repairs were actually made as the breakdowns occurred and to illustrate this loss we point out that with two shifts of men working ten hours each or twenty hours per day there were, from August 1, 1922, to March 15, 1923 (the winter season), 4540 working hours, yet the plant was in operation only 1890 hours or about 42 per cent. of the time. The other 50 per cent. of these possible working hours were spent in repairs to the machinery, work that should have been done and could have been done before operation of the plant was started.

*Second.*—The action of the board of directors in having the company thrown into bankruptcy on October 5, 1922, which action made it necessary for the receivers to cease purchasing raw materials for almost two months thereafter. This action caused an incalculable loss to the company, as the receivers on advice of counsel did not resume the purchase of raw mate-



rials until they were entirely out of such materials, with the result that the coal dust was delivered to us in frozen condition, costing thousands of dollars to unload the cars and in demurrage charges, and we were never able to operate the plant to capacity thereafter owing to the frozen condition of the coal dust.

Besides the losses referred to above, these legal actions brought by the corporation have caused an expense against the receivers of over \$6000, exclusive of any allowance to receivers' counsel made by this Honorable Court.

Prior to receivership this company was managed by a general manager, salary \$250 per week; plant manager, salary \$100 per week; treasurer, salary \$50 per week; chemist, salary \$40 per week; plant engineer, salary \$50 per week; foreman, salary \$45 per week; yard superintendent, salary \$42.50 per week; weighmaster, salary \$30 per week; bookkeeper, salary \$30 per week, and telephone operator, \$12 per week. Total for the ten individuals, \$649.50 per week. Since the appointment of receivers the company has been managed by the receivers, assisted by one plant superintendent, one office manager, and one bookkeeper, and the total weekly salaries, including allowance to receivers, amounted to \$270 per week.

The receivers have improved the product, increased the sales and received more money for the goods than ever before, as shown by the following tabulation:

<i>Year</i>	<i>Output tons</i>	<i>Income from sales</i>	<i>Rate per ton</i>
1920	21,048	191,132.95	9.08
1921	16,119	133,387.30	8.27½
1922	17,883	179,163.81	10.02
Jan. 1st to Oct. 1st,			
1923	14,291	143,947.56	10.07

So far this report covers the activities of the receivers up to the spring of 1923 and through a period when there was a great scarcity of coal in the city of Newark and when the demand for substitute fuel was far greater than production. The receivers used every means in their power to further the sale of the product of this company and on or about April 15, 1923, when the sales of briquettes had dropped to the small amount of 396 tons for the month, the receivers called together at the office of the company thirty-nine of the large coal dealers of Newark, who had been dealing with the company during the previous season, and urged each of them to buy three hundred tons of briquettes to be taken at their convenience from the pockets of the company, any time up to October 1st, so that the plant could be operated profitably during the summer months. Twenty-seven of these coal dealers were stockholders of the defendant company, yet not one of these dealers was willing to purchase ten tons of briquettes without first receiving an order from a customer. These dealers did not purchase any briquettes during the entire summer, although the receivers offered to sell them briquettes at \$9.00 per ton, whereas theretofore they had been paying \$11.00 per ton.

On May 15, 1923, the receivers wrote a letter to each of the 5000 stockholders of the company, a copy of which letter is annexed hereto, asking each stockholder to purchase two tons of briquettes at \$9.00 per ton, which was \$1 less than an authorized coal dealer could purchase a ton of coal at the pockets of the wholesalers. The result of this solicitation was the sale of sixty-eight tons instead of the anticipated 10,000 tons.

On September 17, 1923, the receivers again wrote the stockholder-dealers calling a meeting at the office of the company, a copy of the letter being annexed hereto, and asked them to contract with the receivers

to purchase 110 tons each at \$9 per ton. A copy of the proposed contract is annexed hereto. Only two dealers of the city of Newark, namely N. Drake and John H. Applegate, signed the contract as requested and purchased briquettes.

The receivers then, on September 30, 1923, sent the sales manager, Mr. Lawrence Fagan, a salesman of twenty-five years' experience, to New England, going to Worcester, Springfield, Providence and down through the Connecticut cities, and the net result of this solicitation was the sale of one car of forty-five tons in Providence, R. I. In each case the reason for the failure to sell was that the consumer will not use a substitute for coal.

On October 7, 1923, the receivers began an advertising campaign in the newspapers in the cities of Newark, Paterson, Passaic, Hoboken, Jersey City and Elizabeth to sell the product direct to the consumer. This is the plan which the receivers are operating under at the present time, namely, retailing a product direct to the consumer at a price from \$1.50 to \$2 less than coal can be purchased from the authorized coal dealers. This advertising campaign cost the receivers approximately \$7000, but in spite of this great effort we sold only 1675 tons of briquettes during the month of October, whereas in the same month the year previous we had sold 3072 tons; and in the month of November the sales were 1468 tons, whereas in November last year the sales were 4226 tons. In the month of December the sales fell off still further to 692 tons, whereas the sales for December last year were 3356 tons. The sales for the month of January amounted to only 710 tons, whereas the sales for January last year amounted to 4269 tons. It is evident therefore that in spite of advertising and reduced prices there is practically no demand for a substitute fuel such as bri-

quettes unless it is impossible to obtain the household sizes of the well-known anthracite coal.

In conclusion we wish to state that in April, 1923, when the sale of briquettes was practically over for the season, we took advantage of this opportunity to give the plant and machinery a complete overhauling so that we would be in position to operate continuously and at maximum production during the 1923 and 1924 winter season when we anticipated practically the same demand for briquettes as was the case in the winter season of 1922 and 1923. It will be remembered that in the spring of 1923 it was almost an established fact that there would be another coal strike, when the contract expired on the first of September and therefore, we felt justified in making the expenditure for plant improvements so as not to be found wanting during the winter season as we had been the season before. The coal strike actually happened, but only lasted two weeks and this prompt settlement of the strike together with the unprecedented mild weather of this winter is naturally responsible for the almost complete falling off of sales of briquettes as recorded above.

This part of our report is submitted so that your Honors will know that your receivers gave their entire time to the conduct of this business and spared no effort for its rehabilitation in behalf of its creditors and stockholders and the result is entirely due to the continuous opposition of the corporation itself, the utter lack of co-operation from the stockholders, and the absolute antipathy of the general public to the use of substitute fuel when anthracite coal is obtainable.

Respectfully submitted,

A. L. KIRBY,  
JOHN P. DUFFY.

A. L. Kirby & J. P. Duffy

Receivers for

BURNRITE COAL BRIQUETTE CO.

May 15, 1923.

*To the Stockholders of the Burnrite Coal Briquette Co.*

Dear Sir or Madam:

In the early part of January of this year you received from the undersigned Receivers a pamphlet outlining the history of the company under the management of Francis M. Crossman, and also a brief outline of what had been accomplished by the Receivers since their appointment of May 11th, 1922.

You will recall that on or about the tenth day of October, 1922, we learned that the company had been thrown into Bankruptcy in the State of Delaware through action of the President, Francis M. Crossman and the Board of Directors dominated by him. The Court set aside the adjudication in Bankruptcy and reopened the case, but as the three petitioning creditors alleged to have been secured by Crossman did not push the case further, these proceedings were discontinued last March.

You will also recall that on the 22nd day of December, 1922, Judge Lynch, of the United States District Court, District of New Jersey, ordered the Receivership be made permanent, and thereupon Francis M. Crossman, without authority from the Board of Directors or the stockholders, served notice of appeal. This latest legal action on the part of Crossman came up for argument in the Court of Appeals at Philadelphia, Wednesday, April 11th, and we are now awaiting the opinion of that Court as to whether or not the Receivers or Crossman will be in control of your property.

The stockholders of this company are the owners of property, buildings and machinery equipment situ-

ated in the City of Newark, of considerable value, and against these assets exclusive of the capital liability, there are undisputed liabilities of approximately \$27,000, and questionable liabilities amounting to \$36,415.90 claimed to be owing to F. M. Crossman, his wife and certain companies alleged to be controlled by Mr. Crossman. There is a substantial difference, therefore, between the assets and liabilities, and this amount is well worth conserving.

Judging from the results of the operation of the plant from August, 1922, to February of this year under Receivership it should be clear to everyone that if the plant is operated to capacity through the summer months as well as through the winter months this company can be placed on a firm financial basis with all of its just debts liquidated. On the other hand, if there is no sale for the product and we are compelled to shut down during the months of May, June, July and August we will start the winter season with a serious handicap, that is, we will be without an organization, no finished or raw materials on hand, or, in other words, we will be in the same position practically, as we were last season, as a result of the almost endless litigation.

All of which leads to the question—How are the stockholders going to co-operate with the receivers and make it possible to operate this plant continuously through the summer months?

The answer, as worked out by the Receivers is, for each of the 5000 stockholders to immediately send direct to the company an order for two tons or more of briquettes at the very low price of \$9.00 per ton at the pockets of the factory.

This means an investment of only \$18.00 for the product of your own company, and in return for which you receive material which has been selling at wholesale to the coal dealers at \$11.00 per ton, and also this price is \$1.00 per ton less than an authorized coal dealer

can purchase coal at the coal pockets of the wholesalers.

It must be understood, however, that this tonnage must be taken by you from the pockets of the company on or before September 1st, 1923, at which time winter prices go into effect, and the Receivers reserve the right to cancel any orders for tonnage that has not been taken before September 1st, 1923.

It is further understood that all orders are to be subject to acceptance by the Receivers.

We require with the order a cash payment of fifty per cent. of the purchase price, or in other words, \$4.50 for each tons orders, and the balance (with actual cost of delivery added) is to be paid at time of delivery. If you arrange for your own delivery, the price as above is \$9.00 at the pockets.

The Receivers, in their efforts to rehabilitate this company and save the investment of thousands of individuals, have not called upon the stockholders to put up a single dollar, which is most unusual in cases of this kind, and, naturally, the Receivers do not feel that they are at all unreasonable in asking and expecting the stockholders to purchase the product of their own company at this time.

The successful operation of this industry during the coming months is now entirely up to you, and we earnestly request you to reply to this letter immediately.

Yours very truly,

A. L. KIRBY & J. P. DUFFY,

Receivers for

THE BUENRITE COAL BRIQUETTE CO.

Sept. 17, 1923.

Gentlemen:

Referring to recent telephone conversation with the writer, beg to state I have decided to call a meeting of about 25 representative coal dealers of this city for the purpose of determining the best method of disposing of our production this season. The plan as first outlined by me over the telephone is of course subject to change, and I am sure that we can arrive at some arrangement that will be mutually beneficial.

I will hold this meeting at the office of the briquette plant, 543 New Jersey Railroad Avenue, at 2.30 o'clock, Wednesday afternoon September 19th.

I trust that a member of your firm or at least your representative will attend this meeting, as I consider it of great importance for you and ourselves to know exactly where we stand this season.

Very truly yours,

A. L. KIRBY &amp; J. P. DUFFY,

Receivers for

THE BURNRITE COAL BRIQUETTE CO.

By

ALK:LD

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September 24, 1923.

A. L. Kirby & J. P. Duffy, Receivers,  
Burnrite Coal Briquette Co.,  
Newark, N. J.

Gentlemen:

We beg to state it is our intention to handle briquettes during the coming winter, and we expect to purchase 500 tons or more during the period October 1, 1923 to March 1, 1924.

We hereby order 110 tons of briquettes at \$9.00



per net ton making \$990.00 for the entire order, delivery of said briquettes to be made to us between October 1, 1923 and March 1, 1924.

Enclosed find check in amount \$990.00 advance payment for the 110 tons ordered above.

Although we are ordering and paying in advance for only 110 tons, we are willing to have this prepayment used and applied against our entire purchase of briquettes for the season, it being understood that said \$990.00 will be rebated at the rate of \$2.00 per ton, as the briquettes are delivered to us. In other words, we will make a cash payment of \$7.00 for such ton of briquettes taken from your plant during the coming season until we have taken 495 tons or until such time as we decide to terminate this agreement.

In complying with your request for prepayment, we understood that the price to us for any amount of briquettes up to 500 tons that we may choose to order during the coming season shall not exceed said price of \$9.00 per ton.

It is also understood that we shall enjoy a preference together with any other coal dealers who join in this proposition for prepayment, as against all other coal dealers who have not accepted your plan, and that our wagons shall take precedence in the line over the wagons of such dealers as have not joined in this plan for the delivery of at least 500 tons.

Kindly acknowledge receipt of this order in writing, and greatly oblige

Yours very truly,

## COMPARATIVE BALANCE SHEET.

Balance Sheet at May 11, 1922, Actual figures as shown by the books of the company.		Balance Sheet at May 11, 1922, as it should be drawn according to investigation of Receivers.		Balance Sheet at January 31, 1924.	
					Increase Black Decrease Italics
Cash in bank & on hand	191.62	191.62	872.50		
Notes & Accts. Receivable	15,359.13	2,388.02	1,095.05		
Inventories	6,919.87	6,919.87	16,900.86		
TOTAL CURRENT ASSETS		22,470.62	0,490.51		18,868.41 9,368.90
Land	32,474.50	32,474.50	32,474.50		
Buildings	192,369.77	154,932.09	161,397.21		6,465.12
Railroad Siding	9,597.39	9,597.39	11,310.01		1,802.62
Machinery	304,783.62	190,889.18	245,959.50		55,070.32
Tools & Implements	3,344.86	3,344.86	4,174.44		829.58
Patterns	1,266.00	1,266.00	1,266.00		
Laboratory Equipment	1,151.75	1,151.75	1,151.75		
Office Fur. & Fixtures	2,803.72	2,803.72	3,128.42		344.70
Automobiles	2,350.00	350.00	350.00		
TOTAL	550,051.61	396,719.49	461,211.83		
LESS Reserve for Depreciation	47,888.99	48,888.99	48,888.99		
TOTAL FIXED ASSETS					
Formulae & Good Will		502,102.62	347,830.50		412,322.84
Capital Stock, B. C. B. Co. of N. J.		602,150.00	no value		no value
Treasury Stock		1,444,495.00	no value		no value
First Mortgage Bonds		88,198.00	no value		no value
Taken by F. M. Crossman to secure indebtedness		48,600.00	48,600.00		
Excess of security over indebtedness		36,415.90	36,415.90		
Deferred Assets		12,184.10	12,184.10		12,184.10
TOTAL ASSETS		2,932,586.61	369,514.11		443,375.35 73,861.24

# Report and Account of Receivers

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LIABILITIES					
Notes & Accts. Payable	22,352.82		85,625.31	63,272.49	
Script Dividend due Nov. 15, 1921	4,200.84		4,200.84		
Dividend on Preferred Stock unpaid	19.30		19.30		
Accrued Payroll	489.86		602.81	412.95	
Processes B. C. B. Co. of N. J.	263,100.02				
Mortgage on Land	2,350.00				
Mortgage Bond Subscriptions	120.00		120.00		
1st Mortgage 8% Gold Bond					
Less unissued					
*Capital Stock	52,100.00		52,100.00		
	1,509,000.00		1,411,802.00		
SURPLUS DEFICIT					
Script Dividend declared April 20, 1921	6,958.67				
Loss for year 1921	90,334.72				
" " period 1/1/22 to May 11, 1922	14,261.84				
Deficit per books					
Total Deficit	1,012,374.48				
	111,555.23		1,111,403.91		
TOTAL LIABILITIES					
*Interim Certificates B. C. B. Co., N. J.	2,932,586.61		443,375.35		
	1,199,400.00				
		Assets Increased		73,861.24	
		Liabilities Increased		61,335.44	
		NET INCREASE		\$12,525.80	

ANALYSIS OF CASH DISBURSEMENTS FOR PERIOD MAY 11,  
1922 TO JAN. 31, 1924.

## BY EXPENSE CLASSIFICATION.

<i>Expense Account</i>	<i>Amount</i>
Productive Labor	24,910.23
Non-Productive Labor	20,709.78
Trucking Account	3,983.40
Auditing & Investigating	2,511.86
Bond & Insurance	5,206.90
Auto Repairs & Expense	223.50
Material	184,461.75
Tel. Tel. Office Exp. & Salaries	9,945.89
Executive Salaries	8,150.00
Petty Cash	2,422.22
Oils & Lubricants & Sundries	6,474.00
Light, Heat & Power	31,088.60
Repair Parts, Additions & Im- provements	32,224.92
Installation Labor (own)	21,411.06
Tools & Implements	911.46
Accts. Payable Prior to 5/11/22	7,920.15
Interest Account	922.99
Legal & Professional Expenses	3,480.07
Bank Notes	25,790.00
Deposits Returned	1,702.96
Interest on Bonds	280.00
Demurrage	1,987.00
State of Delaware Tax	200.00
Custodians & Employees May to July, inclusive	2,458.09
Total Cash Disbursements for Period May 11, 1922 to Jan. 31, 1924	\$399,376.83

*Report and Account of Receivers*

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ANALYSIS OF CASH RECEIPTS FOR PERIOD MAY 11, 1922  
TO JAN. 31, 1924.

Balance per check book	191.62	
Checks issued prior to 5/11/22, payment refused	353.47	
Accounts Receivable	241,066.13	
Cash Sales	101,814.32	
Interest earnings	164.68	
Miscellaneous Income	2,190.84	
Payroll	107.23	
Petty Cash	25.41	
Accounts Receivable prior to 5/11/22	2,388.02	
Entries Renewal of certificates by Bank	48,150.00	
Cash Loans	3,095.94	
Interest Account	101.67	
Total Cash Receipts for Period May 11, 1922 to Jan. 31 1924		\$400,249.33

ANALYSIS OF ACCOUNTS RECEIVABLE AT JANUARY 31,  
1924.

J. V. D'Alloi	206.83	
John Hendlovitz	37.43	
Faitoute I. & S. Co.	25.75	
W. J. Motzenbecker	65.05	
C. D. Wetmore	24.00	
Mrs. Linn	12.00	
J. P. Grady	188.70	
John Muller	1.50	
Reliable Box & Lumber Co.	100.00	
Simmonds, L. N.	6.05	
Suydam, O. B.	26.14	
F. M. Wood	267.00	
Consumers Coal Co	79.05	
DeFago Apart.	20.50	
Sanders & Son	35.05	
Total Accounts Receivable		\$1,095.05

## ANALYSIS OF ACCOUNTS PAYABLE AT JANUARY 31, 1924

## BY EXPRESS CLASSIFICATION.

<i>Expense Account</i>	<i>Amount</i>
Repair Parts, Additions & Improvements	10,004.91
Tel. & Tel., Office Expense	97.81
Insurance	2,566.84
Tools & Implements	6.00
Office Furniture & Fixtures	294.20
Oils & Lubricants & Sundries	332.92
Light, Heat & Power	1,528.66
Legal & Professional Exp	157.40
Taxes	3,041.84
Material	3,071.16
Interest Account	127.13
Demurrage	330.00
Trucking	193.05
Advertising	630.14
Total Accounts Payable at January 31, 1924	\$22,382.06
Messrs. Mahaffy & Roberts, Attorneys for Receivers in Delaware Action in Bankruptcy Proceedings in Delaware	4,000.00
Advance Payments for briquettes	910.26
Total Accounts Payable at January 31, 1924	\$27,292.32

# Report and Account of Receivers

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## RECEIVER'S CERTIFICATES, LOANS AND TRADE ACCEPTANCES

PAYABLE AT 1/31/24.

### Trade Acceptances.

Deibler Coal Company.		Merchants & Manufacturers Natl. Bk.		
Date of Note	Interest Rate	Time	Due Date	Amount
1/15/4	6%	20 days	2/5/4	667.68
1/21/4	6%	25 "	2/16/4	1086.72
Fred'k Weiler				M & M Bank
1/15/4	6%	2 mos.	3/15/4	253.10
Scheck Advertising Co.				M & M Bank
1/9/4	6%	1 mo.	2/9/4	5876.73
A. B. Diss				
1/5/4	6%	on demand		2500.00

### Receiver's Certificate.

Merchant's & Manufacturers Bank				
10/18/3	6%	2 mos.	12/18/23	(past due) 10000.00
11/5/3	6%	2 mos.	1/5/4	(past due) 15000.00

### Loans Payable.

H. O. Habendahl				
1/5/4	6%			595.94
Total				\$35980.17

STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

A. L. Kirby and John P. Duffy, of full age, being duly sworn according to law, on their several and respective oaths, say:

We are the Receivers named in the foregoing report and account and the said account was prepared by us from the books and records maintained by us as such receivers and the said account is correct and true to the best of our knowledge, information and belief.

We have also read the report hereto annexed and the matters and things therein stated, are true in so

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far as they are within our knowledge, and as to those matters stated upon information and belief, we believe same to be true.

Sworn and subscribed to  
before me this 9th day  
of February, 1924,  
A. D. } ALFRED L. KIRBY,  
JOHN P. DUFFY.

GOLDA BERGOFFER,  
(Seal) *Notary Public of New Jersey.*

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Service of a copy of the within report and account is hereby acknowledged this eighth day of February, 1924.

McCARTER & ENGLISH,  
*Solicitors for Defendant.*

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EXCEPTIONS TO REPORT AND ACCOUNT OF  
RECEIVERS.

(Filed February 14, 1924.)

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Burnrite Coal Briquette Company, the above-entitled defendant, excepts to the report and account of Alfred L. Kirby and John P. Duffy, as receivers of Burnrite Coal Briquette Company, served on the defendant's solicitors February 8, 1924.

1. The report and account are not sufficiently specific, nor properly itemized.
2. Vouchers in support of the disbursements for which credit is claimed are not produced.



3. That part of the account headed "Analysis of cash receipts for period May 11, 1922, to Jan. 31, 1924" is insufficient for the following reasons:

(a) The entry "Accounts receivable, \$241,066.13" is not sufficiently itemized. The said entry should show, among other things, the dates of the receipts, and what they were received for;

(b) The entry "Cash Sales, \$101,814.32" is not sufficiently itemized. The entry should, among other things, show the dates of the sales, what was sold, and at what price;

(c) The entry "Interest Earnings, \$164.68" is insufficient, and should be accompanied by a statement explaining the same;

(d) The entry "Miscellaneous income, \$2,190.84" is insufficient, and should be itemized showing, among other things, the dates of the receipt of the income, and the source of it;

(e) The entry "account receivable prior to 5/11/22, \$2,388.02" is insufficient, and should be itemized so as to show, among other things, the dates of the receipts by the receivers, and from whom or what accounts they were received;

(f) The entry "Entries renewal of certificates by bank, \$48,150" is insufficient, and should be explained, and should be itemized so as to show the dates of receipts, from what banks, on what certificates, when issued, when due, etc.

(g) The entry "Cash loans, \$3,095.94" is insufficient and should be explained and itemized, showing

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the dates of loans, by whom they were made, for what amounts each, and the rate of interest thereon.

(h) The entry "Interest account, \$101.67" is insufficient and should be explained, showing the dates of receipts, and the source of the same.

4. That part of the account headed "Analysis of cash disbursements for period May 11, 1922 to January 31, 1924, by expenses classification" is insufficient for the following reasons:

(a) This account should be itemized showing each disbursement, and describing the same as to date and nature of disbursement, so that the account on its face will show whether or not the disbursement is justifiable, or one which the receivers were authorized to make. This is true of each and every of the twenty-four entries under the aforesaid heading;

(b) Vouchers in support of the disbursements should be submitted;

(c) Every item of disbursement should be dated;

(d) No disbursements are justified because the receivers were appointed without jurisdiction;

(e) Under the decision of the Circuit Court of Appeals, and under the mandate thereof, the receivers are not entitled to credit for any disbursements whatsoever.

5. The account is insufficient in that it contains no proper statement of receipts and disbursements showing in an intelligible way what the receivers have received, and what disbursements they have made.

6. The "Analysis of accounts payable at January 31, 1924" is insufficiently itemized or explained.

7. That portion of the account headed "Receivers' certificates, loan and trade acceptances payable 1/31/24" is insufficiently explained in that, among other things, the consideration for the loans or trade acceptances or receivers' certificates is not stated.

8. The report and account is too general and manifestly insufficient.

McCARTER & ENGLISH,  
*Solicitors of Defendant.*

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STATE AND DISTRICT OF NEW JERSEY, ss.:

OSCAR SACKS, being duly sworn, according to law on his oath deposes and says:

1. I am a clerk in the office of Messrs. McCarter & English, solicitors of the defendant in this cause.

2. On the thirteenth day of February, 1924, I served the within exceptions on Joseph L. Smith, Esquire, solicitor of the receivers of the defendant herein, by leaving a true copy thereof with the person in charge of his office, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of that day.

Sworn to and subscribed before  
me this 13th day of February, 1924. } OSCAR SACKS.

EDITH S. POWELSON,  
(Seal) *Notary Public for New Jersey.*

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Service of the within exceptions is acknowledged  
this                      day of February, 1924.

.....  
*Solicitor of Receivers.*

**ORDER OF REFERENCE.**  
(Filed February 21, 1924.)

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Alfred L. Kirby and John P. Duffy, as receivers of the defendant above named, having been, by order of this Court made herein on the twenty-fourth day of January, 1924, ordered to account as such receivers within fifteen days from the date of the said order, and the said receivers having, within said time, filed and served an account, and the defendant having, within the time limited by the said order, served and filed exceptions to the said account,

It is, on this twenty-first day of February, 1924, on motion of Messrs. McCarter & English, solicitors of the defendant, ORDERED, that it be referred to Charles M. Mason, Esquire, who is hereby appointed special master to take and state the account of the said Alfred L. Kirby and John P. Duffy, as receivers of the defendant above named; and

IT IS FURTHER ORDERED that the said special master shall not exclude from the account so stated by him any disbursements which shall be proved by the said receivers to his satisfaction to have been actually made by them, because, in the opinion of the said special master, the said disbursements shall not be justified as a matter of law, but shall report the same, together with all relevant facts, to the Court; and

IT IS FURTHER ORDERED that the said special master do make his report with all convenient speed, and that exceptions thereto by either party be filed and served on the opposite party within ten days after the coming in of the said report, and that the hearing on the said account, and on the exceptions thereto, if any, may be brought on by either party upon five days

notice given after either the service of such exceptions, as aforesaid, or after the expiration of the time within which exceptions may be served and filed, and that all further equity abide the further order of the Court upon the hearing on the said account and the exceptions thereto.

WM. N. RUNYON,

*U. S. District Judge.*

IN THE UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF NEW JERSEY.

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IN BANKRUPTCY. No. 3582.

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*In the Matter of Edward G. Riggs,*  
Complainant,

v.

*The Burnrite Coal Briquette Co., a Corporation,*  
Defendant.

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SPECIAL MASTER HEARING ON RECEIVERS'  
ACCOUNTS (IN EQUITY).

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Transcript of testimony taken in the above-entitled matter on the eighteenth day of March, 1924, before his Honor Charles M. Mason, Referee in Bankruptcy, at the Bankruptcy Court Room, 201 Essex Building, Newark, New Jersey.

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Appearances: GEORGE C. C. McCARTER, Esq., for acceptants;

JOSEPH L. SMITH, Esq., for receiver.

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ALFRED L. KIRBY, SWORN.

DIRECT EXAMINATION.

By Mr. McCARTER:

(Receivers' account and report offered in evidence and marked "Exhibit R-1.")

Q. Mr. Kirby, will you turn to that part of the account, R-1, which is headed "Analysis of cash receipts" for period of May 11, 1922 to January 31, 1924, and look at the first item on that, headed "Balance

per check book"? Will you tell me just what that represents?

A. According to the check book of the company, when we took charge, there was in the bank \$191.62, according to the check book.

THE COURT: Have you the check book available?

A. I believe so.

Q. I ask you, Mr. Kirby, to look at the last item, "Checks issued prior to May 11, 1922, refused payment," what does that represent?

A. They were checks the bank refused as soon as we were appointed receiver. They wouldn't honor any checks that came in after our appointment, when we took over the bank account.

Q. Did the bank afterwards return the checks to you?

A. I presume they did.

Q. Have you them, or if not, what voucher have you to show that was the amount that you received?

A. Just a minute on that; the banks wouldn't return the checks to me, they would return them to the party who presented them, to the holders of the checks, and I don't believe we have them here.

Q. What book, or entry have you you could show us that—from which you derived this second item on the page of your account we are now considering?

A. We have all of the old books of the company.

Q. This is not in the old books?

A. It is in the cash book.

Q. Will you show it to me?

A. Surely.

Q. Have you any book of your own in which this entry of \$191.62 will appear?

A. Yes, our cash book.

Q. Will you produce it, please?

A. Here it is.

Q. I ask that this be marked in evidence.

(Received in evidence and marked "Exhibit 2.")

Q. Digressing from the point for a moment—what other books, besides the cash book, Exhibit 2, did you, as receivers, keep?

A. We kept a complete set of books for an up-to-date bookkeeping system—ledgers, journals, etc.

Q. Will you produce the books, one by one?

A. Yes, sir.

THE COURT: Who was the bookkeeper?

A. Miss Dreier, Miss Louise Dreier.

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LOUISE DREIER, SWORN.

DIRECT EXAMINATION.

By MR. SMITH:

Q. When did you enter the employ of the Burnrite Coal Briquette Co.?

A. July 1, 1918, I think.

Q. Have you been continuously in their employ, and in the employ of the receivers, since then?

A. Yes.

Q. Upon the receivers being appointed, they continued you in their employ?

A. Yes.

Q. Prior to the receivers being appointed, what was your position with this company?

A. I was stenographer and bookkeeper.

Q. In what capacity did the receivers employ you?

A. The same.

Q. Have you kept all of the books of account of the receivers since their appointment?

A. Yes, I have.

Q. What books did the receivers maintain?

A. The cash book which you already have.



Q. What other books were there?

(Following books received and marked in evidence as follows: Purchase Ledger, "Exhibit P-3"; Sales Ledger, "Exhibit P-4"; Accounts Receivable and Payable, "Exhibit P-5"; General Ledger, "Exhibit P-6"; Journal, "Exhibit P-7"; Payroll, "Exhibit P-8"; Petty Cash Book, "Exhibit P-9.")

Q. Were these all of the books kept by you?

A. Yes.

Q. They were all of the books the receivers maintained, other than the check books?

A. Well, I have a trial balance book.

Q. Where is that?

A. It is this book.

(Book received in evidence and marked "Exhibit P-10.")

Q. What are these books?

(The following books received in evidence and marked as follows: Notes Payable and Receivable, "Exhibit P-11"; Accounts Receivable and Payable, "Exhibit P-12"; Trial Balance Book, "Exhibit P-13.")

Q. What bank accounts were maintained by the receivers?

A. In the Fidelity Union Trust Co. and the Merchants & Manufacturers' Bank.

Q. Have you the check books?

A. Yes. But some we just tore out, it was a pad system.

Q. You tore out checks from what date?

A. From about May 11th or 13th.

THE COURT: Of what year?

A. 1922.

Q. I show you this check book and ask whether that was the first book you opened for the receivers?

A. Yes, it was.

(Fidelity Union check book received in evidence and marked "Exhibit P-14.")

Q. What other check book had you?

A. The Merchants & Manufacturers' National Bank, before we got the pad system.

Q. I show you this check book and ask whether that was the book you just referred to of the Merchants & Manufacturers' National Bank?

A. Yes, it is.

(Received in evidence and marked "Exhibit P-15.")

Q. How did you maintain your account in the Merchants & Manufacturers' Bank, as is not evidenced by the check book Exhibit P-15?

A. I wrote out checks and put them in the book.

Q. You wrote out what?

A. Wrote checks out and then entered checks in the book as having been paid out.

Q. In the cash book?

A. Yes.

Q. The cash book which is already in evidence?

A. Yes.

THE COURT: Is there any way of checking?

A. I have all the checks.

THE COURT: The number of the check is entered in the cash book?

A. Yes.

Q. Have you the cancelled checks returned to you after you commenced to use that pad system?

A. Yes, they are all here.

Q. I offer them in evidence.

MR. McCARTER: They are here, and if they are needed, let them be offered and identified then. A blanket offer of about 300 checks will be quite a little trouble to look through.

(Checks received in evidence, two bundles, and marked "Exhibit P-16 and P-17.")

Q. Have you any other books besides these?

A. No, that is all I have.

By MR. McCARTER:

Q. Prior to the giving up of the check book system on the Merchants & Manufacturers' Bank, when would you transfer the entries reported in the stubs of the Merchants & Manufacturers' Bank, check book P-15, to any other book? And to what book would you transfer them?

A. To the cash book, they are entered as disbursements.

Q. In the cash book?

A. Yes.

Q. I suppose all of the stub entries in P-14, (book of the Fidelity Union Trust Co.) were also entered in the cash book?

A. Yes.

Q. That was done, I suppose, daily, in every case?

A. Yes, it was.

Q. From what source would you get your information for the items in the cash book, Exhibit P-1?

A. From checks received and money received.

Q. From moneys and checks received?

A. Yes.

Q. Did you make out all checks yourself?

A. Most all of them, I guess, unless I wasn't here.

Q. Well, you usually made them all out?

A. Yes.

Q. Who made them out when you were absent?

A. Sometimes Mr. Fagan or Mr. Kirby.

THE COURT: Who is Mr. Fagan; employed by the receivers?

A. Yes.

Q. The next book, purchase ledger, Exhibit P-3, impart to us the meaning of the entries in that? (I

am looking at page 1 under date of May 1, 1922—that must have been May, 1923—no, May, 1922.)

A. I received invoices and entered them in the book.

Q. Item 1, National Surety Co. account, \$1.25. what does that item indicate? What does it stand for?

A. I received an invoice from the National Surety Company.

Q. For what?

A. For \$125.

Q. Where does it appear here what the invoice was for?

A. For unexpired insurance.

Q. It was a return premium on cancelled insurance?

A. That wasn't for that, it was for a bond.

Q. The receivers' bond?

A. Yes.

Q. Why would the receivers' bond come under May 1, 1922?

A. That was the date of the invoice.

Q. The date is the date of the invoice?

A. Yes.

Q. Where does that item appear in Exhibit P-1, the cash book?

A. That wouldn't appear in the cash book until it was paid.

Q. Can you find the invoice which that first entry represents?

A. Yes.

Q. Please produce it.

A. Yes.

Q. These entries in Exhibit P-3, the purchase ledger, were made by you on the receipt of an invoice?

A. Yes.

Q. And the item under column No. 1 at the left of

every page, represents the number of the invoice, which we can look at if we want to compare it with the entry in this book?

A. Yes.

Q. These items in this book do not represent cash received but only invoices received by the receivers?

A. Yes.

Q. I show you Exhibit P-4, the sales ledger, and ask you to explain the first item on page 1 of that book. What does the number under the date column mean?

A. That is the date of the invoice, May 26th.

Q. The date the receivers issued invoices?

A. Yes.

Q. The next number is the number of the invoice?

A. Yes.

Q. The name "Henry Etling" for example, is the name of the person to whom the invoice was sent?

A. Yes.

Q. The item under the heading "weight" is the weight of the material invoiced?

A. Yes.

Q. I suppose all of these items will be for briquettes sold?

A. Yes.

Q. I turn to Exhibit No. 5, which you have described as the book which shows accounts receivable and accounts payable; will you, then, indicate which part of the book shows accounts payable and which accounts receivable?

A. The front is accounts receivable and the last part is accounts payable.

Q. Where the letters of the alphabet begin, from there it is accounts payable?

A. Yes.

Q. The various dates, under the various names of the accounts receivable, are dates on which the item became due from J. H. Applegate, for example?

A. You mean the debit side?

Q. Yes.

A. Yes, that is the date we sold some briquettes and on this date they paid for them.

Q. The second part of the book is accounts payable; will you also explain those items in the same way?

A. The side that has the numbers is the number of the invoice, and the amount we owed them, and the other side is when we paid them.

Q. You mean the left-hand side?

A. Yes, when we paid it.

Q. Exhibit 6 you have described as the general ledger?

A. Yes.

Q. From what books would you post in this general ledger?

A. From the cash book, purchase ledger, sales book, journal, that is about all.

Q. Dropping the ledger for a moment, and turning to the journal, Exhibit 7, just explain the entries in this book? I am using as a basis of explanation, page 1, covering May 1, 1922.

A. At the end of the month, we always put in the total sales and then charged it off to the material on hand.

Q. What was the function, in a general way, of the journal? What did that tell you, or record, that the other books, the cash book, purchase ledger, accounts receivable and payable, etc., did not record?

A. I don't know just exactly how to explain it.

THE COURT: He wants to know the purpose of this book.

A. It records transfers between the accounts which are neither purchases or sales.

MR. SMITH: It might be renewals of notes discounted, or receivable, credits to customers for

returns—practically a transfer journal, is that right?

A. Yes.

Q. Going back to Exhibit 6, the ledger, how often would you post from the other books into this book?

A. Every month, at the end of the month.

Q. From whom, or from where, would you get authority as to the accounts in the ledger under which you would enter the items; for instance, I have here unexpired insurance on page 39. What would cause you to enter an item, debit or credit, under the heading "unexpired insurance" in the ledger?

A. When we received an invoice which is for a policy running for a year, naturally when you put it in the book, it is unexpired at the time I enter it.

Q. Would you ever get any direct instructions from the receivers as to what account you should credit or debit in the ledger, or what account you should credit or debit an item to?

A. Not unless I didn't know myself.

Q. Not unless you didn't know?

A. No.

Q. For example, on page 141 of the ledger, we find a heading "depreciation." Did you make entries under that heading without instructions from anyone, or did the receivers instruct you to charge or credit these items?

A. After the books were opened, every month I took so much off for depreciation. They didn't tell me.

THE COURT: What accountant opened the books?

A. Mr. Gurley.

THE COURT: That, I suppose, was done for the purpose of the income tax?

A. Yes.

THE COURT: This was usually 10 per cent.?

A. It was a different per cent. for the machinery and a different one for the building.

Q. I notice, under page 149, the heading "dividends." Where did you get the authority to charge or credit the items entered on that page to dividends?

A. I don't know how to explain it. An accountant opened the books and each month so much was written off to dividends, or rather reserve. That was supposed to be dividends for the month.

Q. I am not looking at page 151, I am interrogating you with respect to page 149, to what "dividends" mean.

A. The amount of the dividends to be paid to the stockholders was \$1239 each month, and it was written off on the preferred stock and in the books as having to be paid, but of course, it was not paid.

Q. Let us explain the entries—on the right-hand side, under date of December 31 is an entry of \$9912—what is that?

A. That represents the total amount of dividends from May to December, 1922.

Q. The true amount of dividends that would have been paid on the preferred stock, if a dividend had been paid?

A. Yes.

Q. What are the first items, the first five items, on the left-hand side of the page? What do they represent?

A. They are the total amount. They represent every month.

Q. What every month?

A. Dividends to be paid each month. That represents the dividends if they were able to pay them.

Q. The receivers never paid any dividends on the preferred stock?

A. No.

Q. What I am driving at is, if the item on the right-



hand side represents the dividends accrued, so to speak, what do the items on the left-hand side represent?

A. The right-hand side is the offset. It is the profit and loss. That is charged off at the end of the year.

Q. How do you reach the figure that on August 31, 1922, \$4956 had something to do with dividends?

A. Because that is May, June, July and August.

Q. That is the amount which dividends, had they been earned, would have accrued during the months of May, June, July and August?

A. That was the total amount that would have been paid at that time. We didn't make any entry for May, June or July, we put it all under August; that included four months.

Q. The subsequent items are what accrued every month?

A. Yes, every month.

Q. Turn to the next page, 151—reserve for dividends. What is that?

A. The reserve is the liability the corporation owes to the stockholders.

Q. Then this is sort of a compensating page to page 149, the dividend page?

A. One is the debit and one the credit side of the page.

THE COURT: Isn't that somewhat useless book-keeping? Did you keep it that way before the receivers were appointed?

A. No, not then.

Q. I now ask you to explain the payroll book, Exhibit 8. What does the number under the heading at the extreme left of each page indicate?

A. It is the number of the man's card.

Q. The name of the man?

A. Well, yes.

Q. The amount under the heading "Total amount" is the amount of his weekly pay?

A. The amount he received that week.

Q. The entries under heading "Received payment," what do they indicate?

A. Where wages were charged to that account.

Q. What does "non prod" mean?

A. Non-productive.

Q. How did you distinguish between which accounts were productive and which were non-productive? And cost on sales, engines and boilers, and such other different accounts as may have been?

A. Cost on sales were men working on the production of the briquettes, and the engine and boiler were the engineer and fireman, and non-productive were men working out in the yard, and like that.

Q. Office employees were people in the office?

A. Yes.

Q. We are now looking at Exhibit 11, bills payable, and I ask you to look at that book and tell us whether that does not go back to the period before the receivers, and tell us where the receivership entries commence?

A. The first few pages belong to the old corporation, up to May 8, 1922.

Q. Commencing with page 17 is when the receivership began?

A. Yes.

Q. Tell us the meaning of the different items under date of September 25th; that is the date the note or bill was drawn?

A. No, the date it was given to us.

Q. The note given by the receivers, or due them?

A. Payable.

Q. In other words, this book records the obligations of the receivers?

A. The first part does, the other part is payable.

Q. The pages I am now looking at are bills payable?

A. Yes.

Q. They are the obligations of the receivers?

A. Yes.

Q. The entries under the heading "Date" means the date the note or bill or draft was drawn?

A. The date, yes.

Q. The item under "Number" is the serial number of the note or bill or draft?

A. From here on I had the numbers, 1, 2, 3, etc., after that it was the dates.

Q. The names entered under the column "In whose favor" is the person in whose favor the bill or note was drawn?

A. Yes.

Q. The names entered under the column "Where payable" shows where the item was payable?

A. Yes.

Q. The figure under the heading "Time" shows the length of time it ran?

A. Yes.

MR. SMITH: I would like to ask why you are looking at these books?

MR. McCARTER: Because we want to find out about them so it can be put in the record. We are going to ask to have the accountants look at the books between hearings.

MR. SMITH: I think that would be better.

MR. McCARTER: I ask the Master at the present time, whether our accountant may, during the hearing, so long as it does not interfere with the use of the books by the Master, counsel or witnesses, examine such books as have been put in evidence.

THE COURT: Any objections, Mr. Smith?

MR. SMITH: I object to it simply because I

don't think, under this proceeding, where we are stating the account, that the defendant has any right, except under order of this Court, for an inspection of these books. I don't think it proper under this proceeding of reference. I don't see how it will help you any.

THE COURT: Reserve that question until we get through with this witness, and then bring it up with the question as to right. It is only a question whether or not their looking through them will assist Mr. McCarter in his cross-examination. I don't see how there could be any particular objection to that.

MR. McCARTER: That is up to them.

THE COURT: Do you consider it helpful to you in the examination?

MR. McCARTER: I asked them to look through and see if there were any questions and other suggestions—

MR. SMITH: We have no objection to their having access to these books under proper circumstances. The books are there and are offered in evidence, and I don't say that we have any objection to their seeing them, or having access to them, but I don't believe this is the proper time. If we are going to have an accountant go over the books, that will dispose of their going at the books.

MR. McCARTER: I don't see that it is an improper time, when it doesn't interfere with anyone else.

THE COURT: I don't see, myself, how it would prejudice you. Evidently, from the way it is now, Miss Dreier seems to be expediting matters and clearing up the situation by showing the method in which the books were kept. She probably knows more about it than the receivers do. Probably this would be the best time to let them examine

the books, and see that they are in good order and well kept. I think it wise to let them look over the books.

Q. The last items under "When due," of course show when the particular piece of paper became due?

A. Yes.

Q. The amount entered under the amount column is the amount of the note?

A. Yes.

Q. Under remarks, you have entered various remarks which will speak for themselves?

A. Yes.

Q. Do you know whether any of these items represent receivers' certificates?

A. I do.

Q. Please indicate to me the date of the item.

A. September 25, 1922.

Q. That was a receiver's certificate?

A. It was given as a loan under the receiver's certificate; given as a loan by the Merchants and Manufacturers' Bank.

THE COURT: You got money on the strength of the receiver's certificate?

A. Yes.

Q. What about the one under November 27th, was that a receiver's certificate?

A. Yes.

Q. The item of November 27th was of what year?

A. Year of 1922.

Q. Is the item of May 3, 1923, a receiver's certificate also?

A. It was a renewal of September 4th, no—that wasn't a receiver's certificate, that was a receiver's certificate due, these two were paid.

Q. But the item was a receiver's certificate?

A. Well, yes.

Q. Was the item of September 25th for \$10,000?

A. Yes.

Q. And the item of November 27th for \$5000?

A. Yes.

Q. And the one of May 3, 1923, for \$15,000?

A. Yes.

Q. Look at the item under date of July 18, 1923, for \$10,000, and tell me if that was or was not a receiver's certificate?

A. Yes, that was a receiver's certificate, in favor of the Merchants and Manufacturers' Bank.

Q. Look at the item under September 4, 1923, for \$15,000 in favor of the same institution, and tell me if that was a receiver's certificate?

A. That was a renewal of one of the prior ones.

Q. Will you look at the item under October 18, 1923, in favor of the same place for \$10,000? Was that also a receiver's certificate?

A. Yes, but it is also a renewal.

Q. Is the item under November 5, 1923, in favor of the same bank, for \$15,000, also a receiver's certificate?

A. That is also a renewal.

Q. Were there any other receiver's certificates issued by the receivers?

A. No.

Q. How much did they amount to at any one time?

A. \$25,000.

Q. Turning to the bills receivable part of the book, I ask you whether the entries referring to the plant during the receivers' control, do not commence under date of April 26, 1923?

A. Yes.

Q. They do?

A. Yes.

Q. Will you please explain that first item?

A. The date, April 26, 1923, is the date of the

transaction, the date the trade acceptance was given by S. Brody to us for merchandise.

Q. For merchandise?

A. Yes.

Q. He bought briquettes and paid for them with a trade acceptance?

A. Yes.

Q. It is true, is it not, that all trade acceptances entered in this book during the period of the receivers' control, the drawer was Mr. Brody?

A. Yes.

Q. Where is his place of business?

A. Trenton, N. J.

Q. The amount of the trade acceptance, in each case, appears under the column headed "Amount"?

A. Yes.

Q. The period they have to run appears under the column "Time"?

A. Yes.

MR. SMITH: Is April 26, 1923, the first date the receivers had any bills receivable, or notes payable?

A. That is the first time, yes.

Q. June 30, 1923, was the last date on which the receivers--no, July, on which they received bills receivable?

A. Yes.

Q. That became due three months after that?

A. Yes, ninety days.

Q. Are any of these paid?

A. They have all been paid.

Q. I ask you to look at page 157 of the ledger, Exhibit 6, and ask you if that does not show the profit and loss account.

A. Yes.

Q. Does that show, as of December 31, 1923, a profit or a loss?

A. You mean 1923?

Q. Yes, December 31, 1923.

A. It shows a loss.

Q. A loss of how much?

A. Of \$84,013.67.

Q. Will you please turn to the journal, and explain the entry which has been posted to page 157 of the ledger, Exhibit 6; the journal entry under date of December 31, 1923?

A. No. 32 opposite the word journal, that is the entry.

Q. What does that entry in the journal indicate? Explain it to us.

A. It is depreciation on machinery.

Q. In other words, there was charged from profit and loss to depreciation on machinery the sum of \$3853.99?

A. Yes.

Q. So that a pre-existing loss was diminished by that amount?

A. You mean a larger loss before that amount was put in?

Q. Yes, is that so?

THE COURT: Was that for taxation purposes? That looks like income tax.

A. Yes, it is.

Q. "December 1923, 141, Depreciation, Reserve for depreciation on machinery, \$3853.99." 141, what is that?

A. The page in the ledger.

Q. What is the little No. 3 to the right?

A. The account posted to in the ledger, the page.

Q. Was there no larger loss shown by the profit and loss account before that entry was made in the journal and posted in the ledger?

A. Yes.

Q. What is the first entry on the top of the page?



“Ledger account, Non-productive labor, 117, charge for installation of machinery by our own men, \$21,411.06”?

A. That was machinery put in by our men, and I had it charged to non-productive labor, and it should have been charged to machinery account.

Q. Does that appear on page 157 of Exhibit 6?

A. Yes.

Q. Where is the indication on page 32 of the journal; this item is posted on page 157 of the ledger?

A. There.

Q. These items on the right-hand side of the page in the journal are the debits or credits?

A. Credits.

Q. The left-hand side is the debit?

A. Yes.

Q. So that under the date December 31, 1923, the profit and loss account was credited with \$21,411.06 from this entry on page 32 of the journal?

A. Yes.

Q. So that before that account or item, was entered in the profit and loss account the loss was that much larger?

A. Yes.

Q. Who instructed you, if anybody, to make those two entries of \$21,411.06 and \$3853.99 in either the journal or profit and loss account of the general ledger?

A. Mr. Kirby.

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Mr. Kirby, recalled.

DIRECT EXAMINATION.

By Mr. Smith:

Q. Mr. Kirby, taking up the items Mr. McCarter has just interrogated Miss Dreier on, relative to the profit and loss account in Exhibit 6 and as shown also in Exhibit 7, will you explain to us those two items,

and why it was that you instructed Miss Dreier to so enter them? I mean the items of \$21,411.06 and the item of \$3853.99.

A. We were shut down at the time we made the repairs, and the installations, and we used our own force to put these new parts in, and they worked on them for several months, worked on them putting them in, and inasmuch as we were shut down and not producing, Miss Dreier charged all of that labor to non-productive labor, whereas the proper charge was installation of machinery. I didn't notice that it was not properly entered in the book until I went over the books at the end of the year, and at that time, I instructed her to make the journal entry so it would be properly entered in the books.

Q. Referring to the ledger where there is a profit and loss item of \$284,013.67 as of January 1st, that was carried over January 1, 1924, will you explain that item?

A. That item includes depreciation and is a charge we could properly make against production. Most of the net profits of this was for the purpose of taking what was our due in making up the income tax. That includes dividends to preferred stockholders and all that sort of thing, because from the very beginning we kept a set of books, as we thought the Court and the owners of this business would wish us to keep our records, and so we had a production, a monthly production report, of operations, production, and general financial conditions.

Q. That is in Exhibit 13?

A. Yes, and you will find here two sheets for every month. One sheet as we were instructed to keep our records by counsel, which of course does not include dividends to stockholders, depreciation, or any of those items, and one the way it should be kept for the best purposes of this business in making out the income

tax, and seeing how the business did progress, whether it was making or losing money, and that is the purpose—it is on that account, our books show a loss for 1923 of some \$83,000.

THE COURT: In other words, they can include depreciation on the plant as a loss?

A. Yes.

Q. There is an item or entry of dividends due; what is that?

A. We set that up just to have a bookkeeping system here that was absolutely complete, the same as if we actually owned the business and were responsible for these obligations, although the accounts can actually be separated in a twinkling.

Q. What are those items or entries of reserve for dividends; what is the purpose of that?

A. Here when you get a monthly operating statement of this kind, you show the cost of sales and your preferred stock is practically the same as a loan, and so the reserve for dividend was put down here every month.

Q. You didn't deduct preferred dividends from your income tax return?

A. We kept it in our books to show whether we were running behind or ahead.

By MR. McCARTER:

Q. Going back to where we were before Miss Dreier took the stand, and turning to the receivers' account under analysis cash receipts, are you now able to show any check book entries which will support the entry showing \$191.62?

A. Here is the check book.

Q. Will you turn to the entries?

A. This is the first time I have ever looked at this check book, and Mr. Smith, a public accountant, was on the books when I took charge, and also Puder & Puder, engaged by you, were working on the books. I think

even his report shows an item of \$191. Anyway, this lead pencil writing, which we didn't disturb, shows a balance of \$138.75, so we are accounting for \$50 more than we received.

Q. In what book of yours is entered the item of \$353.47, checks issued prior to May 11, 1922?

A. In the cash book. Cash receipts.

Q. I ask you to look at page 2 of Exhibit 2, cash book, and see if you can show me where this item I just asked about appears?

A. In the very first entry, "Balance \$545.09." That balance is made up of the first two entries of the account.

Q. Turning to the next item, item of accounts receivable, \$241,066.13, what book shows that entry?

A. The accounts receivable ledger.

Q. Accounts receivable \$241,066.13?

A. Yes.

Q. The accounts receivable ledger will show that?

A. Yes.

Q. Does this item in the account before you, in accounts receivable, to the amount of \$241,066.13, mean moneys which had been paid to the receivers, or they had outstanding accounts to that amount?

A. These have already been paid. This is an analysis of the cash receipts.

Q. They have been paid?

A. Yes.

Q. Where can we get the information showing same, from which we can see the dates of the receipts and what the receivers received them for?

A. In the cash book. If the money was received, it was entered in the cash book, and everything under this column is for accounts receivable. Under the other column is the explanation for it. Everything under this column is accounts receivable.

Q. Whatever is under the column headed "Accounts Receivable" is accounts receivable, then?

A. Yes. What it is for, you would have to turn to the party's account in the ledger, and see, but inasmuch as we were only selling briquettes, it can be taken for granted. If it was anything else it would be explained in the other column here.

Q. So as a practical matter, if we are checking information, we would not have to look at anything but this cash book?

A. Yes.

Q. If it is not for briquettes, it will be mentioned as something else right here?

A. Yes.

Q. As to cash receipts and cash disbursements, that book is absolutely complete?

A. It is, absolutely.

Q. The last item on this page of your account is cash sales \$101,814.32. Are the items making up that total found in the cash book, Exhibit 2?

A. In daily accounts, daily receipts, yes.

Q. For example, the entry under May 18, 1922, "Cash sales, 2,000 lbs. \$10.50," that shows the total cash sales on that day?

A. Yes.

Q. That is the money actually given over the counter, not in checks, but in currency? If you sold some briquettes and were paid right away by check, what sort of an entry would be made for that?

A. If the man had an account with us, if he was a dealer, that check would be listed and written out, his name in full, and credited through the ledger and cash book, etc. In a case where a man came in once and tendered a check, that would probably, I do not say positively, be included in the cash sales for the day, rather than open an account for a man who would not be back again.

Q. Item of interest earnings, \$154.68, what is that?

A. Interest on bank balances, interest we earned.

Q. On the receivers' deposits in the bank?

A. Yes. It probably included discounts. We discounted bills when it was possible to get a discount and we had cash with which to pay them.

Q. Items making up the total of \$164.68 would appear where?

A. In the cash book.

Q. Can you tell me some of the items that go to make up the total miscellaneous income of \$2190.84?

A. That represents all other moneys for which we kept no separate account, such as the sale of some second-hand automobiles; refunds on freight charges; money received for the sale of gasoline, etc.

Q. Have you anywhere an itemized statement of that account?

A. Only as the money was received will you see an item in the cash book.

Q. Of course that is only the total, so in making up that sum of \$2190.84 for this account, you went through the cash book and took off a list of those minor items and entered them, and that is the total?

A. We checked them, page by page.

Q. What was your system of keeping track of the cash sales; how would you check, for example, the amount of coal sold on May 18, 1922, as 2000 lbs.?

A. We had no system. We had to simply trust to the credibility of our employees.

Q. They would report to you they had sold so much and produce cash for it?

A. Yes, but let me explain on that. It would not be possible to check up on that because we have no way of determining how much is in the bins, and how much there is at the beginning of the day, but we have a clock, and that records every seventy or seventy-five lbs. That is presented to me daily, as to the tonnage

that was produced here. There can be no mistake about that. Our sales at the end of the month would check up pretty closely, allowing for what we used in our ovens, etc., which, of course, had to be estimated. Then there is another check-up; that is the amount of coal purchased and the amount of coal sold.

Q. How much cash would you keep right here in the office for petty cash ordinarily, and how?

A. We had an established amount of \$50.

Q. If cash received from sales would be over that, you would make a deposit?

A. We don't do it that way. Every dollar that came in here had to be deposited, and every dollar paid out was paid by check.

Q. So all receipts from the sale of coal were deposited and did not pass through the petty cash at all?

A. Yes, and no. Yes, they were deposited; no they did not pass through petty cash.

Q. Turn to the account entitled "Payroll \$107.23". Will you explain that?

A. Yes, I will. We overdrew our payroll. We drew more than was required and \$107.23 was deposited in the bank, and had to go through the book to show it.

Q. The item Petty Cash \$25.41, can you explain that?

A. That must have been a similar affair. It was probably overdrawn; through error we drew out \$25.41 more than was required to keep our balance, and therefore, we re-deposited it in the bank.

THE COURT: Would that show in the cash book?

A. Yes, it must be in the cash book somewhere. It is for money we actually put in the bank to the credit of the company, so if it can't be found, it would be quite as serious as if it was the other way, anyway.

MR. McCARTER: Yes, I agree with you.

THE COURT: It probably is in the cash book.

Q. Item of May 11, 1922, for \$2388.02, does that mean accounts receivable contracted by the company before the receivers were appointed, or compensation to the receiver?

A. Exactly.

Q. I wish you would explain the entries "Renewal of certificates by the bank" of \$48,150?

A. To begin with, you put in a certificate to the bank for \$10,000, say for two months. At the end of the two months you are not prepared to take up that certificate, and you renew; therefore, you put it in your cash receipts again. It keeps going in your cash book all the time and it is a charge made against that. I am not an accountant, and I can't explain these things to you just as I would like, but every time we renew, and they gave us credit for \$10,000, we also had to show that credit in our cash book. The full amount of this item amounts to \$48,000, whereas at no time did we ever have over \$25,000, for that was the cost of our borrowing.

Q. This item of \$48,000?

A. Is the total amount borrowed by receivers from the banks on certificates originally and on renewals, adding up the renewals as if they were new loans, and not just renewals. I suppose there is an item to offset it in our disbursements.

Q. The certificates issued by the receivers are only those Miss Dreier testified to from the accounts payable book?

A. Yes.

Q. The item of cash loans \$3095.94 is what?

A. Item representing amount of cash loans we received from A. B. Diss, \$2500.

Q. When did you receive that loan?

A. It is set forth on this sheet January 5, 1924, \$2500.



Q. The amount of \$195.94, Henry Hebbendal, what date was that?

A. January 5, 1924.

Q. The item headed cash loans on the account is the total of the Diss and Hebbendal loans?

A. I haven't added it up.

Q. What are those demand loans?

A. One is on demand.

Q. The other?

A. An open loan without trade acceptance or note. It has since been taken up and paid; liquidated through the sale of briquettes.

Q. You mean the Hebbendal or Diss loan?

A. The Hebbendal loan.

Q. The Diss loan is still unpaid?

A. Yes.

Q. Can you explain the interest account? The last item on the page of this account?

A. \$101.60 represents an offset entry, in that we had made out a check for interest due the bank on a trade acceptance which was returned to us, inasmuch as the bank, in renewing the certificate, had already deducted the amount of interest from our account.

Q. Turn to the disbursements page of the account headed "Analysis of cash disbursements, May 11, 1922, to January 31, 1924, productive labor \$24,910.23," where do we find that itemized?

A. In the ledger under accounts "Productive labor," and in the payroll book.

STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX, }

MARION C. BROOKER, being duly sworn, according to law, on her oath deposes and says that she will well and truly take stenographically and reproduce in type-writing the testimony taken in the above entitled matter.

Sworn to and subscribed }  
before me, this }  
day of 1923. }

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I, CHARLES M. MASON, Referee in Bankruptcy, do hereby certify that the accompanying testimony was taken by the above named stenographer selected by me, and I believe it accurately sets forth the evidence given.

*Referee in Bankruptcy.*

**SPECIAL MASTER HEARING ON RECEIVERS'  
ACCOUNTS (IN EQUITY).**

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Transcript of testimony taken in the above entitled matter on the nineteenth day of March, 1924, before his Honor Charles M. Mason, Referee in Bankruptcy, at the Bankruptcy Court, Room 201 Essex Building, Newark, New Jersey.

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Appearances: GEO. W. C. McCARTER, Esq., for acceptants;

JOS. L. SMITH, Esq., for receivers.

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ALFRED L. KIRBY, recalled.

**DIRECT EXAMINATION.**

By MR. McCARTER:

Q. Will you turn to the page of the account headed analysis of cash disbursements, and direct your attention to the first item, "Productive labor, \$24,910.23"? Can you tell me of what items that total is made?

A. Made up of the men who worked on the machines, as against those who worked in the boiler room and engine room and the yardman's helpers.

Q. In what book or books are the items making up that total indicated?

A. In the payroll book.

Q. Does each one of the pages in this book represent a week?

A. Yes.

Q. So that the total for the week appears here?

A. Right here, at the bottom of the column.

Q. So the total for the week of May 11-13, 1922, is \$221.14?

A. Yes, correct.

Q. That would not necessarily be productive labor, that is the total payroll?

A. Yes.

Q. Productive and non-productive labor?

A. Yes.

Q. What is the productive labor, as you describe it?

A. I don't think there was any for that particular week. That is before we operated; we didn't operate until July 28th.

Q. I turn to page headed "Time for week ending July 27-29, 1922," and ask you how many days you worked?

A. May I look at the book? We worked seven days a week, as a rule.

Q. What is the meaning, or significance, of the heading at the top of that page "Week ending July 27-29"?

A. I can't explain that.

THE COURT: Who can explain it?

MISS DREIER: It is the men's wages ending Thursday, and the salaried people ending Saturday, so it is the week of July 27-29.

Q. Look at that page and tell me whether or not the total payroll for that particular week was not \$529.88?

A. That is correct.

Q. Tell me what you call productive labor payroll for that week?

A. \$270.18.

Q. What are the other items of payroll, distributed among classifications?

A. Engine and boiler, \$75; office, \$122; non-productive, \$62.70, that is crossed out, but that is what it should be.

Q. What did the person whose name looks like "Munson" do?

A. Superintendent.

Q. What was his weekly pay?

A. Fifty-five dollars at that time.

Q. What did Malleck do?

A. He was foreman, also the millwright and blacksmith.

Q. Charles Baker, what was he?

A. On the ovens.

Q. J. Wolf, what was he?

A. I don't remember him.

Q. Winkler, what did he do?

A. On the mix.

Q. Fred Vogel?

A. On the ovens.

Q. J. E. Perry?

A. On the press.

Q. M. Hopkow?

A. I don't know, I don't remember him.

Q. J. Cook?

A. I don't remember him, either.

Q. H. Pilsek?

A. I don't know him.

Q. Noting many of these names have opposite them under the remark column headed "Received payment" either the word productive or non-productive, can you tell me what those men did?

A. Yes, I can tell what each one did now. In my answers before, I meant I was not personally acquainted, and couldn't remember their names. Do you wish me to read the names again?

Q. Yes.

A. Munson, superintendent; Malleck, foreman; Baker, worked on the ovens; J. Wolf, probably worked on the dryer—

THE COURT: Is it a question of whether it is productive or non-productive?

MR. McCARTER: Go ahead as to names oppo-

site whom in the column "Received payments" appears the word "productive."

A. J. Ware, helper; H. Wolf, helper; Winkler, mixers; Vogel, ovens; D. Baker, helper; Perry, press; Jackson, night watchman.

Q. They worked as productive?

A. No, non-productive.

Q. I am asking you to read only those under productive. Do you understand when the word "non" appears, it means non-productive? I am asking you to read productive.

THE COURT: Specify just what you mean.

MR. McCARTER: I asked him to read the names of those opposite whom appears "productive."

THE COURT: Go through now, and give just which ones were productive, without giving their capacity.

A. Munson, Malleck, Chas. Baker, J. Wolf, Winkler, Vogel, Perry, Hopkow.

Q. What do they do? I am asking a question, and I want it answered, if we are here all afternoon.

MR. SMITH: The witness is answering the question.

THE COURT: I will take the blame for misleading him. I thought he had given what they were doing before. You want a list of the productive men, with what they were doing.

MR. McCARTER: That is what I have been asking for.

A. Munson, superintendent; Malleck, foreman; Chas. Baker, top of ovens; J. Wolf, dryers; Winkler, mixers; Vogel, ovens; Perry, press; Hopkow, mixers; J. Cooke, I don't know what he did; H. Pilsek, I don't know what he did. That is all of the productive.

Q. Just what was the basis for distinguishing between productive and other kinds of labor, excluding

office labor, but aside from that, what was the basis of distinguishing productive from other kinds of labor?

A. Productive labor is charged directly to the cost of sales, and non-productive is a burden or overhead.

Q. How would you determine whether to charge Winkler, for example, to the cost of sale, or not?

A. Winkler was mixing the batch, and was directly connected with the production of briquettes.

Q. He worked on the briquettes?

A. Yes.

Q. How about the men working in the engine room? You didn't charge that to productive labor?

A. We had a separate item and charged it under overhead.

Q. Why didn't you charge them under productive labor?

A. It was only a question of following out a general business practice to take all people not directly connected with the operation of the machinery and production of the goods, and put it under the heading of overhead, or burden.

Q. You couldn't have run your machinery without the engineer?

A. No.

Q. Nor could you have run your engines without the boilers?

A. No, but we could have run them without operating the rest of the plant, or producing briquettes, because the engines and boiler could be run without producing anything, so you don't put them under the heading of productive labor, but under overhead, because the boilers are going all the time and the production of briquettes is often interrupted for weeks at a time.

Q. I notice the following week, week ending August 3-5, the engine and boiler payroll was \$100.20. Can you explain why there was that increase; why there was that increase of over \$25 in that one week?

A. No, except there must have been another man on.

Q. How many men were on the week before?

A. Three.

Q. How many men on the week when the total was \$100.20?

A. Three. Oh, I can explain that now. Kitching didn't work Sunday and Monday, and Sistrum didn't work Sunday, Monday or Tuesday, and Leshock didn't work Friday.

Q. Those are the three men in the engine and boiler room?

A. Yes.

Q. I think you have explained it now. Turning to the page for the week ending January 18-20, 1923, I ask you to look at the book and tell me the total payroll for that week, as divided among the different items, and the total payroll?

A. Productive labor, \$557.15; non-productive labor, \$716.40; engine and boiler, \$186.60; laboratory, \$30; executive salaries, \$100; office expense, \$95; total, \$1685.15.

Q. Tell me what is meant by—who received executive salaries?

A. Mr. Duffy and myself.

Q. At what rate?

A. \$100 a week; \$50 a week for each.

Q. How long did that continue? When did you begin to draw that and for how long?

A. From the date of the order—the court order.

THE COURT: What was that date?

A. I think July 13, 1922.

THE COURT: It would be in the books?

A. Yes.

MR. SMITH: There was an order made directing the receivers to compensate themselves at the rate of \$100 a week, which related to the date of their appointment, May 11, 1922, as I recall.



Q. When did they start to pay it? Look at the books and tell me when they began to draw that?

A. August 26, 1922. I drew \$50 and Mr. Duffy didn't draw anything at that time.

Q. When did Mr. Duffy commence to draw?

A. December 23, 1922.

Q. How long did you continue to draw \$50 a week?

A. I had been drawing it continuously since——

Q. Since the date you started?

A. Yes.

Q. Down to and including the date of the account?

A. Yes.

Q. January 31, 1924?

A. Yes.

Q. How long did Mr. Duffy continue to draw his?

A. The same time, from his start.

Q. The total of executive salaries drawn by Mr. Duffy and yourself, during the period from when you severally commenced, down to the date of the account, is \$8150, as stated in the item called "Executive Salaries" on this particular page of your account?

A. Yes.

Q. I notice, Mr. Kirby, in going through the payroll book for the weeks following, week ending January 18, 1923, and I have gone through as far as week ending March 8-10, 1923, that there is no substantial reduction in the payroll, that is correct, is it not?

A. Up to March there was quite a substantial increase each week; no, I wouldn't put it quite as strong as that, for it went up and down.

Q. But you know there was no substantial decrease?

A. Yes.

Q. When did you first make a substantial decrease in the payroll after the week ending January 18-20, 1923?

A. I think about April, no, I guess it was March,

the early part of March, when we laid off the night shift; that was the cause for that.

Q. You knew long before you made that change, that the case had been taken by appeal to the Court of Appeals?

MR. SMITH: I object to that. I don't think it a proper question, or material to this reference.

MR. McCARTER: It would be a question of the propriety of the disbursements.

THE COURT: We have to take up all of it.

MR. SMITH: It seems to me we aren't here to pass upon the legal question as to the effect.

THE COURT: We simply want to get the facts. It is not a question for me. All I can do is have the testimony taken, subject to your objection. It doesn't strictly come within the accounting. He had no legal right to make these disbursements.

MR. SMITH: But you are not called on to pass upon this question. Simply to take testimony upon which the Court will pass upon the question.

THE COURT: So the Court may review anything I might suggest or find.

MR. SMITH: If the question isn't material, there is no reason——

THE COURT: It would be as to the legality of these disbursements. That has to be argued before Judge Runyon.

MR. SMITH: Well, I object to it.

THE COURT: Your objection is noted.

(Question repeated.)

A. Yes.

Q. I ask you to look at the payroll book for the week ending August 9-11, 1923, and tell me whether or not the total payroll for that week was not \$991.08?

A. It was.

Q. And does the total payroll for the weeks there-

after, down to and including the week ending October 4-6, 1923, show any substantial decrease?

A. No decrease.

Q. You, of course, knew, long before October 4, 1923, of the opinion for reversal in the Court of Appeals?

MR. SMITH: I object, on the same grounds as before.

THE COURT: Objection noted.

(Question repeated.)

A. Yes.

Q. I notice that the week ending October 11, 1923, the payroll totalled only \$793.57. Can you explain the reason for that reduction in the payroll?

A. We were practically shut down for three days in the week.

Q. Did you employ any so-called "productive labor" at any time after the week ending October 4-6, 1923?

A. Yes, every week.

Q. You knew, of course, did you not, that the mandate from the Court of Appeals to the United States District Court, directing dismissal of the bill in this case, was dated October 25, 1923?

MR. SMITH: I object, the same as before.

THE COURT: Objection noted.

(Question repeated.)

A. Yes.

Q. Did you and your co-receiver, make any change by way of diminution, by way of the disbursements you made, after the date of the mandate from the Court of Appeals?

A. No.

Q. After the date in which you knew the Court of Appeals had filed its opinion.

MR. SMITH: I object.

THE COURT: Objection noted.

(Question repeated.)

A. Not as a result of that. As a matter of fact, our disbursements were reduced, but not as a result of that.

Q. Drawing attention to the second item of the account "Non-productive labor," I wish you would tell us exactly what payroll expenses were included in making up this item.

A. That includes the helpers and yard man and the night watchman, that is about all.

Q. Doesn't it include everybody in the payroll except those itemized in the productive labor?

A. All but executive salaries, office salaries, engine and boiler and productive; everything except those items.

Q. Look at the page of the account and tell me where office salaries are noted.

A. Telephone, telegraph, office expense and salaries, \$9945.89.

Q. Will you look at the same page of the account and tell me where the engine and boiler payroll is included?

A. It must be under the heading on this account of non-productive labor.

Q. So then on this account, under the heading of non-productive labor, is included everything that appears on the payroll book other than productive labor, executive salaries and office salaries, which amounts to \$9945.89?

A. Yes.

Q. I call your attention to an item about the middle of the page headed "Installation labor \$21,411.06." Tell me what that was.

A. Expenses for installing new machinery we purchased for the plant, and repairing.

Q. I wish you would refer to any necessary book

or books and give me the dates and items making up that total.

A. In explanation of that I want to say it was carried as non-productive labor until we came to arranging our books for income tax, and then I directed Miss Dreier to segregate that and take all that expense from non-productive which is not a proper charge and not allowable and put it where it belonged.

Q. What items of non-productive labor did you instruct her to include in that transfer?

A. We had to go through our daily records and take our payroll for the days we were shut down and the days on which we were making those installations.

Q. Have you any records or memoranda of any kind which will show us how those items are made up?

A. We have a book showing the days we were shut down making such repairs, and the date we were shut down corresponds with the date in our payroll; that is how we arrived at that figure.

Q. This is the same item to which Miss Dreier testified yesterday with reference to the journal entry in the same amount?

A. Yes.

Q. Turn, please, to the third item from the top of the account, "Trucking Account"; what does that represent?

A. Amounts we paid out for trucking--trucking briquettes.

Q. What book does it appear in?

A. In the purchase ledger, and the invoice for each item.

Q. Turn to the next item "Auditing and Investigation" and tell us what that is.

A. Certified accountants' investigation and the auditing and making up of our income taxes on two occasions.

Q. What books does it appear in?

A. The purchase ledger.

Q. Turn to any book or books which will show how that item is made up?

A. The general ledger, Exhibit 6, this shows the date on which the purchase was made. (P. 121, Exhibit 6.)

Q. The first item is \$259.20; turn now to the item "Bonds and Insurance," and tell me what that is.

A. Receivers' bonds and insurance of every kind that was placed on the plant, fire insurance, liability, etc.

Q. The small item headed "Auto repairs" is payment for repairs to an auto truck?

A. Yes.

Q. Turn to the next item headed "Material, \$184,461.75." What does that represent?

A. Material purchased.

Q. In what book or books can we find the entries of that?

A. In the purchase ledger.

Q. That is Exhibit 3? I suppose there is also an entry in the general ledger of this?

A. Yes, in the general ledger.

Q. What is the entry or entries in the general ledger?

A. Material on hand.

Q. I direct your attention to page 9 of the purchase ledger Exhibit 3, to the item under date of September 20th; item 229. Tell me what that represents.

A. The purchase of soft coal from John Wade. Bituminous coal, \$456.55.

Q. The purchase price of \$102.09 is correct?

A. Yes, two carloads.

Q. Where is the invoice or voucher for that?

A. No. 229.

THE COURT: Are the vouchers in order?

A. Absolutely. Everything is so noted in the books.

Q. The last item is telephone, telegraph, office expense and salaries. That you have already told includes the salary of the office employees. Who were the office employees?

A. Miss Dreier, Mr. Fagan, that is all.

Q. What functions did Mr. Fagan fulfil?

A. Office manager. Had full charge of the sales downstairs.

Q. At what weekly salary?

A. Sixty-five dollars.

Q. What other items, besides Mr. Fagan's and Miss Dreier's salaries are noted in this total of \$9945.89?

A. Telephone, telegraph, office expense.

Q. I am going back to a question or two under the material item. I would like to know if you can produce the voucher for the item on page 18 of the purchase ledger, opposite No. 546?

A. Yes.

Q. That voucher No. 546 shows, does it not, that you paid for anthracite coal dust, on January 29, 1923, \$1.25 per ton?

A. Yes, it does.

Q. Item of petty cash, \$2422.22, is, I suppose, all explained in the petty cash books, Exhibit 9?

A. It is all itemized there.

Q. Item "Oils and lubricants and sundries," total \$6474, would, I suppose, be embodied in the purchase ledger?

A. Yes, that item is so substantially for the factory that we have it under a separate account.

Q. There is a voucher probably marked under the heading to correspond?

A. General expenses, grouped under the heading oils, lubricants and sundries.

Q. Turning to the item headed "Light, heat and power," \$31,088.60, in what book or books would the entries making up that total appear?

A. In the purchase ledger.

Q. You paid for all this right to the Public Service Co.? You paid for your power to the Public Service?

A. We have half of our own power; we make some of our own. That is why the item which includes light, heat and power, includes a big item of bituminous coal for running our own boilers.

Q. How do you distinguish between the bituminous coal which appears at least once under the item "Material" and the bituminous coal you charge up under light, heat and power?

A. There was a strike on at the time that purchase was made from Mr. Wade; originally the coal strike was bituminous and we were without bituminous, and I purchased just two cars. Instead of that being charged as it should have been, it went through as a regular purchase from him, as our usual supply of bituminous coal coming through to us under contract, and all went under that proper heading of light, heat and power.

Q. The ordinary bituminous coal purchases were included by you in the entry of light, heat and power?

A. Yes.

Q. What else have you included in that besides the Public Service bills and the prices paid for bituminous coal?

A. I don't think anything.

Q. We turn to the item, "Repair parts, additions and improvements, \$32,224.92." Have you any itemized list of that, or statement?

A. We didn't make it up for this report, but every article purchased is represented in the purchase book in order, and the voucher is on file also.



Q. Items headed "Installation" has already been explained, so I direct your attention—

THE COURT: You are to prepare a statement?

MR. McCAETER: The auditor is investigating installation, repair and additions and improvements.

Q. We now come to the item headed "Tools and Implements, \$941.06." What is that?

A. Shovels, drill, cutter, etc.

Q. Were they purchased by the receiver?

A. Tools and implements are distinguished from the machinery parts.

Q. Were new tools and implements purchased by the receivers?

A. Yes.

Q. Were they used up or thrown away?

A. I guess we have most of them.

Q. Item headed "Accounts payable prior to May 11, 1922, \$7920.15," does that represent debts incurred by the corporation which the receivers have paid?

A. Mostly taxes that, of course, were incurred before, but which had to be paid.

Q. Anything besides taxes?

A. It includes a mortgage on this vacant land, under foreclosure at the time.

Q. How much was the mortgage, can you tell?

A. \$2500.

Q. On the vacant land adjoining the factory to the north?

A. Yes, the mortgage was about \$2300, but the entire cost of the legal expense and interest was about \$2500.

Q. That mortgage didn't cover any part of the factory?

A. No.

Q. Except for the mortgage, this item of \$7920.15

represents taxes paid which had accrued prior to the receivership?

A. Yes. There might have been several small items.

Q. Can you think of any other bills of the old company which you have paid?

A. I was thinking of a check for an account prior to the receivership for some \$32, that the bank refused, and which was brought to my attention. This was the man's own money, that is, it was put up by him for freight, and so I felt in duty bound to give him his money rather than hold him up until the completion of this. That is what I had in mind.

Q. That is included?

A. Yes.

Q. What does the interest account item of \$922.99 represent?

A. Discount and interest on the certificates.

Q. Receivers' certificates?

A. Yes, which were sold at 95.

Q. What does the item "Legal and professional expenses" represent?

A. \$2000 allowance to the receivers' counsel by the court, by court order. That leaves \$1480 and part covers expenses due Delaware on the bankruptcy proposition, and court fees, etc., including stenographers' fees.

Q. Can you show vouchers for what you call expenses due Delaware for bankruptcy proposition? Here is Puder & Puder's bill for \$1000 under this, why is that?

A. I don't know. The auditing, investigating, legal and professional expenses are all under one heading in our general ledger. We will have to itemize it.

Q. Will you turn to the last item headed "Bank notes, \$25,790" and tell me what that represents?

A. That represents the certificates for \$25,000 and

that is the certificates we paid off. As we paid them off, in the aggregate, it amounts to \$25,790.

Q. Do I understand that when you renewed a certificate, for instance, the old one that was renewed is included among the \$25,000 plus here?

A. That is proper. To be more explicit, we borrowed \$10,000 and when it came due and we paid off \$5000 then and similarly a second \$5000, and that was wiped out, and that shows just the same as the other account shows certificates of \$45,000, whereas we had only borrowed the sum of \$25,000.

Q. Then this item of \$25,790 represents receivers' certificates paid off by you?

A. Yes, from time to time.

Q. It does not represent renewed certificates, for which newer ones are now outstanding?

A. That is kind of deep for me, not being a book-keeper. May I ask Miss Dreier?

THE COURT: We will have Miss Dreier on later on.

Q. What vouchers have you in your possession to support this item of \$25,790?

A. We should have cancelled certificates, or if we paid by check, it would appear in our cancelled checks.

Q. What is the item of "Deposits returned \$1702.96"?

A. Deposits on orders.

Q. Deposits by customers?

A. Yes.

Q. Who dealt with the receivers?

A. Yes.

Q. Their deposits would be returned, why?

A. Their deposits were returned through the sale of briquettes.

Q. You would not return a deposit to a purchaser if he completed his order and you sold him briquettes?

A. We had a practice here of requiring a deposit

of \$50 on a carload, so if perchance he refused it, or any trouble ensued, we would be compensated for the return of the freight; often it was \$100. When he paid it, we insisted on paying the full price, and when we got our money, we returned the deposit—that is the explanation of that.

Q. What is the item "Interest on bonds \$280"?

A. Interest we paid on the bonds of this factory. Compensation sent here by the bondholders; first mortgage bonds. That is that.

Q. What is "Demurrage \$1987"?

A. Demurrage we paid the Pennsylvania Railroad through inability to unload cars.

Q. "State of Delaware Tax \$200"?

A. Annual franchise tax to Delaware.

Q. How much annual tax?

A. That must be for one year.

Q. One year?

MR. SMITH: I think it is for two years.

A. The tax is \$150, and includes \$50 additional for the office.

Q. Going back to interest on bonds, \$280; that was not interest on the whole issue outstanding?

A. No, only on those bonds paid for in cash.

Q. How did you determine which were paid for in cash?

A. From our records.

Q. Records of the company?

A. Yes.

Q. It was those which the records showed were paid in cash on which you paid interest?

A. Yes.

Q. The others you have not paid?

A. No.

Q. The next item, "Custodian and employees, May to July, \$2458.09," what is that?

A. That represents the custodian and employees

we retained here up to the time we started operating. We kept that separate.

Q. That is the same thing, practically, as labor items we have discussed for the period prior to your starting operations in July, 1922?

A. Yes.

Q. I ask you to turn to the next page of the account headed "Analysis accounts receivable Jan. 31, 1924," what does that mean, are those accounts totalling \$1095.05, accounts which on that date, namely, January 31, 1924, were due and payable to the receivers?

A. Yes.

Q. Turning to the next page of the account "Analysis of accounts payable Jan. 31, 1924," totalling \$27,292.32, does that represent total obligations of the receivers on that date, other than what is due from the receivers on the receivers' certificates and loans?

A. Yes.

Q. You have already itemized the items going to make up the total of \$10,004.91 due for repairs, additions and improvements?

A. They are always to be found in the purchase ledger.

Q. Except by going through the purchase ledger, you have not itemized them? That is, you have no itemized list of them?

A. No, I have not.

Q. Will you produce the voucher or bill for which you here make an entry to Mahaffy & Roberts for \$4000 legal services?

A. The bill is in either Mr. Smith's or Mr. Lane's office.

MR. SMITH: I will see that it is produced.

Q. What is the item "Advance payment for briquettes"?

A. That was deposits made by dealers, for exam-

ple, if they agreed to take 100 tons at \$10, that would be \$1000, and they would deposit \$1 or \$2 a ton. Of course, it is a liability until they took out their tonnage.

Q. I am showing you voucher No. 1074 for \$5847.61 paid to the Scheek Advertising Agency, invoice being dated October 31, 1923, which invoice has annexed thereto particulars of the advertising, and ask you whether or not the various dates in October mentioned on this voucher, are not October, 1923.

A. 1923, right.

Q. So that all advertising included in that voucher, was incurred by the receivers as of October 5, 1923, and subsequent thereto, was it not?

A. Yes.

MR. SMITH: That will be covered in the statement.

MR. McCARTER: I have gone as far as I can without the things they are to get for us.

THE COURT: When can you get those things?

MR. SMITH: I think we can get them up in a day or so.

By MR. SMITH:

Q. Prior to the appointment of the receivers, what were the total weekly executive salaries?

MR. McCARTER: I object to that as being immaterial.

THE COURT: In what way is it material?

MR. SMITH: From the point raised as to what they paid since the receivership.

THE COURT: I don't know as there was any objection as to the amounts. You mean salaries to the officers?

MR. SMITH: To the executives.

A. \$649.50.

Q. Per week?

A. Yes, per week.

Q. That did not take into account any royalties paid to the president under certain agreements?

A. It took into account the agreement to pay the president no less than \$250 per week.

By MR. McCARTER:

Q. You have included in that amount, payments to the president of how much?

A. An agreement to pay him \$250 per week.

Q. You do not wish to be taken as testifying that the company was actually paying Mr. Crossman \$250?

A. No, but they were obligated to pay him.

Q. How is the balance of \$399.50 per week made up?

A. The general ledger will show.

Q. How?

A. \$250, that is to the president; plant manager's salary, \$100 per week; treasurer's salary, \$50 a week; chemist, \$40 a week; plant engineer, \$50 a week; foreman, \$45 a week; yard superintendent, \$42.50 per week; weighmaster, \$30 a week; bookkeeper, \$30 a week; telephone operator, \$12 a week.

Q. Those are the people who make up the executive salaries?

A. Yes.

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STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX, }

MARION C. BROOKER, being duly sworn, according to law, on her oath deposes and says that she will well and truly take stenographically and reproduce in type-writing the testimony taken in the above-entitled matter.

Sworn to and subscribed }  
before me this }  
day of 1923. }

I, CHARLES M. MASON, referee in bankruptcy, do hereby certify that the accompanying testimony was taken by the above-named stenographer selected by me and I believe it accurately sets forth the evidence given.

*Referee in Bankruptcy.*

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SPECIAL MASTER HEARING ON RECEIVERS'  
ACCOUNTS (IN EQUITY).  
(Filed March 27, 1924.)

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Transcript of testimony taken in the above-entitled matter on the twenty-second day of March, 1924, before his Honor Charles M. Mason, referee in bankruptcy, at the Bankruptcy Court, Room 201, Essex Building, Newark, New Jersey.

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Appearances: MR. GEO. W. C. McCARTER, attorney for acceptant;  
MR. JOS. L. SMITH, attorney for receivers;  
A. L. KIRBY, receiver;  
J. P. DUFFY, receiver.

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ALFRED L. KIRBY, recalled.

DIRECT EXAMINATION.

By MR. McCARTER:

Q. I ask the receivers to produce an itemized statement showing how the total entitled "Installation and labor, \$21,411.06" included among the analysis of cash disbursements, is made up, and the receivers produce a



statement headed "Installation charges," which I would like to have marked in evidence.

(Received in evidence and marked "Exhibit No. P-18.")

Q. Have you any vouchers in connection with the installation charges, itemized for the month of August, 1922?

A. In the payroll book.

Q. You have no other vouchers except the payroll book?

A. None but the time cards themselves.

Q. That is also true with respect to every other month set forth on Exhibit P-18?

A. Yes.

Q. Can you explain how you obtained a total of \$1371.28 as shown on Exhibit P-18 for the month of August?

A. Our record book.

(Record book received in evidence and marked "Exhibit P-19.")

Q. Turn to the record book and show me how you obtained the items under August, 1922?

A. It was repairing the dryers on the ovens. We were shut down these days and when we did run on these days, we started nine-thirty to five o'clock. We took these days we were repairing and took the amounts out of the payroll book.

Q. You say you take the days of the month on which you were not operating, and do what then?

A. Refer to the payroll book and get the amount of money we paid out for labor on those days we were shut down in making the repairs.

Q. You charge the full wages of the men during the days you were not operating?

A. That is correct.

Q. Would there be any days on which you were

not operating in which you would not be making repairs?

A. No.

Q. Would there be any difference in the number of men you kept on the payroll during the time you were operating and the time you were not?

A. Yes, there would be a difference.

Q. A difference of what?

A. Well, say for example, we were shut down on Sunday and only had three or four men, that is all that would appear on the payroll; but if we had to shut down in the middle of the week and had a full crew on, they would be working on it.

Q. That is the same method, I suppose, which you used in other months shown on Exhibit P-18, as well as August?

A. Yes.

Q. I ask the receivers to produce items and vouchers in support thereof making the total entered on page of the account headed "Analysis of Cash Disbursements of Audits and Investigations, \$2511.86," and there is produced a statement and ten vouchers, which I offer in evidence.

(Received in evidence and marked "Exhibit P-20, P-20-A to P-20-I.")

Q. Going back to Exhibit P-18, what did you repair, or what work or repair did you do during August, 1922?

A. The machinery and buildings.

Q. Have you any recollection what the repairs during August, 1922, were?

A. Yes, they were most general. In August there were repairs made to the dryers, ovens, bins and boilers.

Q. That is all you repaired in August?

A. We repaired loose blades in the mixer, put in new mixer blades, repairs to elevator No. 2, repairs

to ovens and No. 2 boiler. Wait a minute, I was looking at September.

Q. Give us again the complete list of August repairs.

MR. SMITH: I object. I don't think it relevant for the receivers, in stating their account, to show what repairs they made. They have submitted their vouchers showing the payment of these items. They have offered to submit these, and there is no question as to the amount that was expended on the repairs. As to what they were for, I don't think it material to this reference. It is pretty hard for a man to go back and tell you everything that was done.

THE COURT: Have you any records of the work done at that time?

MR. KIRBY: Here is a most complete record.

MR. SMITH: The book is in evidence.

THE COURT: Have you record as to moneys spent?

A. No, as to time spent, in the analysis account.

MR. SMITH: I think the record in evidence is the best evidence.

THE COURT: Can you tell from that just what time was spent on the different items?

A. Yes.

THE COURT: I am inclined to let him do it.

MR. SMITH: I know the receiver can do it, but it seems to be taking a lot of time for nothing, when the record is in evidence.

THE COURT: Use whatever memoranda you have. He doesn't expect you to do it from memory.

MR. McCARTER: I asked if he could remember.

MR. SMITH: If the question is urged, of course, I will withdraw my objection.

MR. McCARTER: Possibly I can abbreviate the question and get the same result.

Q. In looking over Exhibit P-19, I see under the different months, in the extreme left-hand column, various entries. Will you tell us whether or not those entries in the extreme left-hand column indicate—tell us what they indicate?

A. They indicate the cause of the shut-down and the work that was done during the shut-down.

Q. Except as stated in that column in Exhibit P-19, are you now able to tell us what any of the repairs made and charged for in Exhibit P-18 were?

A. I can't do it without this book; I can't do it from memory.

THE COURT: Who was directly in charge of the repairs?

A. I was.

THE COURT: Did you have a superintendent?

A. Yes, and a man.

MR. SMITH: Who was he?

A. Mr. Munson.

THE COURT: Was Mr. Munson here when you were appointed?

A. Yes.

THE COURT: And the work continued under him?

A. Yes.

Q. Did you make entries in this book Exhibit P-19?

A. No.

Q. Who did?

A. Mr. Munson.

Q. Were they made contemporaneously after that?

A. About once a week.

Q. Is Mr. Munson in your employ now?

A. Yes.

THE COURT: Were part of those entries made by Miss Dreier?

A. Yes, she made some of them.

Q. I notice the only reference with respect to the month of May in this Exhibit P-19, is as follows: "All of May to June 25, repairs." Can you tell me what repairs were made from May to June 25th?

A. That is when we started to make a complete overhauling of the plant, and there is not any part of this plant that has not been overhauled.

Q. You are not now able to be any more specific as to what repairs were made and charged for in P-18 than as stated in this Exhibit P-19?

A. Yes, I could go into detail; there was the railroad siding—

Q. You say you can tell us?

A. Yes, the railroad siding was completely repaired.

Q. When?

A. During that period, some time.

Q. During what period?

A. Between this period in question; I can't say exactly what days, from memory, it was done; but I know it was part of the work done, and I will be glad to tell more, if it is in order.

Q. The railroad siding was repaired in what way?

A. New ties, new rails, etc.

THE COURT: How long is the railroad siding?

A. About 500 or 600 feet.

THE COURT: Why were these repairs necessary?

A. Because it was condemned by the railroad company. They wouldn't put in any cars until it was repaired to their satisfaction. No. 1 elevator outside had complete new gearing, new chains, buckets, cables, and the motor for running it was completely overhauled, and new take-up blocks put on it. On No. 1

elevator in the yard, we had a complete new chain new scrapers, also sprockets; we rebuilt in its entirety the screen at the top of the dryers; the two main dryers were completely overhauled, every piece of pipe taken out and renewed, and new wheel and chains put on them. The heating of No. 3 dryer was completely overhauled in the same manner, with new pipe, etc. The mixers were furnished with new shelves, all of them with new shafts; the pulverizer was completely overhauled and had at least three sets of new pulleys, hammers, etc. There were at least three sets of manganese steel rolls; the tunnel from the yard to the factory was completely renewed with troughs, sprockets and scrapers. The No. 2 elevator running off of this tunnel, was completely renewed with buckets, chain and sprockets. The transmission apparatus for operating that elevator was completely renewed, in that we put on a new clutch and a complete new set of ropes. The engines operating this part of the factory, namely the dryers, and elevators, was completely overhauled. The main boilers on the walls were torn down and re-set and completely overhauled with new belts, pulleys, etc., where necessary, and from the press to the ovens, we put in a new conveyor belt. At the end of this belt, we put in a new set of buckets and chain for separating the briquettes into pans of the oven. In the oven itself, we furnished a new shaft, two complete sets of sprockets, and a complete set of chain, consisting of something like 250 buckets. We also furnished a brand new conveyor belt and we changed the drive from a rope drive to a direct motor drive. That is about all I can remember.

MR. SMITH: Did you do anything to the bins?

A. Yes. We put in beehive flooring in the bin, so the briquettes would roll down instead of having a flat bottom, to which it was necessary for four to six men to shovel them out of the bin into the chute. We repaired the buildings, painted the smoke-stack, etc.

Q. Was all this work of repair done by employees of the factory?

A. Yes. Well, I wouldn't say all of it. In putting on a new roof we had a sheet metal worker come in and fix that, and we had a carpenter fix the bins. We had the railroad men fix the siding, but all of our machinery repairs were done by our own men, with the exception of the boilers, and we had to have experts do that.

Q. None of the repairs done by outside men are included in this total of \$21,411.06?

A. No.

Q. With respect to that, we eliminate from your lengthy answer the siding and the work done by carpenters, and work done on the roof and on the boilers.

A. Yes, as not being included in that particular item.

Q. What was done with the shafting, and other old parts taken out when you put in new parts?

A. I am sure I don't know. They are probably laying out here yet.

Q. They were not sold?

A. Not that I know of.

Q. Leaving that topic and turning to the item "Audit and Investigation," I look at Exhibit 20-A, which is a bill of Puder & Puder, dated August 3, 1922, for the services of a Mr. Deno, two days. What did Mr. Deno do?

A. He was working on the books.

Q. When?

A. Prior to August 3, 1922.

Q. For what purpose?

A. To give us the data in this case.

Q. For what purpose? Why did you want it?

MR. SMITH: I object. I don't think it material what the purpose of the data was. He was employed by the receivers, they were authorized

to retain any agents or employees they wanted. They retained them and paid them and there are vouchers to show.

MR. McCARTER: If the Court wants any remarks from me, I will say the importance of this is that those orders were all made by the District Court. The Circuit Court of Appeals has now reversed the appointment of the receivers for want of jurisdiction, and one of the purposes of this accounting is to eliminate, and show on the record, the various disbursements made by these receivers and the purposes and reasons for them. In view of this, I think these facts are very relevant.

THE COURT: I think it is within the ruling, as far as that goes. What did this accountant do?

A. He worked on the books and got statements for this action in court.

Q. Was it to assist you in preparing statements to resist the action of the defendant corporation to vacate the receivership?

A. I wouldn't know that. There is nothing specific on that bill.

THE COURT: Did you get this up for the purpose of showing the business as it was transacted by the receivers?

A. This was done by Puder & Puder when we first came in here, this auditing the books.

THE COURT: For the purpose of acquainting yourself with the business; the status of it, etc.?

A. Yes, I would say so. I only followed the court orders.

Q. Puder & Puder, upon receipt of word from you, sent a representative of their firm who made the statements and affidavits which were referred to, on behalf of the receivers?

A. Yes.



MR. SMITH: I object. I don't think it material.

THE COURT: I think that would appear on the record from the court records itself, would it not?

MR. McCARTER: But they are not before you.

THE COURT: No. I will allow the question.

Q. I show you Exhibit 20-B, which is a bill of John W. Gurley for various items which reads as follows: "To preparing monthly statements as of February 1st and as of March 1st, and on combined statement showing losses from January 1st to May 11th, plus losses from May 11th to December 31, 1922. Twelve days at \$4.00 per day, \$48.00" What were these statements desired by the receivers for?

A. In the conduct of the business.

Q. For what purpose did you want them?

A. I just told you that.

MR. SMITH: That has been answered, in the conduct of the business.

A. So we would know how we were progressing; whether we were successful or unsuccessful.

Q. Look at the first item and tell us what year is referred to?

A. It is 1923.

Q. You say it is 1923?

A. Yes. March 12, 1923.

Q. You do not mean to say the combined statement showing loss of January 1 to May 11, refers to 1923, when the bill is dated March?

A. No. We had to—we started in on May 22 and had to have a statement from January 1 to May 11, to see where we stood at the starting point.

Q. When did Mr. Gurley give this work to you—inviting your attention to the fact the bill is dated March 12, 1923?

A. I think we started this in about August.

Q. August of what year?

A. 1922.

Q. Will you tell me what part of the work covered by this first item totalling \$48, Mr. Gurley did in August, 1922?

A. I meant when I said he started in August, that that was when he began whatever work he did do on our books. For what work he did, that kind of work for which he renders bills on March 12th, I do not know; all I know is he actually did the work.

Q. Do you know when he started to prepare the statements charged for in this item totalling \$48?

A. No.

Q. Were these statements placed in your hands or Mr. Duffy's?

A. I think the latter part of August was the date they were placed in my hands.

Q. August of what year?

A. Of 1922.

Q. What statement do you refer to?

A. What do you mean?

Q. I am referring now only to statements charged for in the first item of P-20-B. He has here, to preparing monthly statement as of February 12th.

A. I presume that was placed in our hands about February 5th. The one of March 12th, I presume was placed in our hands about March 5th; the combined statement showing losses from January 1st to May 11th, plus losses from May 11th to December 31, 1922, I suppose was placed in our hands at the same time.

Q. Therefore some time in February or March, 1923?

A. Yes.

Q. What did you want of a statement covering January 1st to May 1, 1922?

A. I don't know.

Q. I ask you to look at the last item on this P-20-B, which reads as follows: "To going over minute

book with A. L. K. and checking certain items listed therein; taking papers to Mr. Smith's office; going to Automobile License Bureau for license application; going to home of A. B. Diss; taking his affidavit for transfer of bill of sale on auto truck; fixing return stockholders' cards and correcting mailing list and names and addresses in stock ledger; 7 days at \$7.00 per day, \$49.00." Tell me whether or not the A. L. K. referred to is yourself.

A. Yes.

Q. When did you go over the minute book with Mr. Gurley?

A. I have no recollection of the date, but he evidently did it with me.

Q. Have you any recollection of the fact that you went over the minute book with Mr. Gurley?

A. Yes.

Q. What was the purpose of that?

A. To familiarize ourselves with it.

Q. Why would Mr. Gurley assist you?

MR. SMITH: Who is Mr. Gurley? What is his business?

A. He is a bookkeeper. I engaged him to put in this bookkeeping system, because he worked for me seventeen years before.

Q. What assistance could Mr. Gurley, a bookkeeper, give you in going over the minute book of the Burnrite Coal Briquette Co.?

MR. SMITH: I think it is immaterial what the assistance was. As the witness says, he wanted him to assist him.

MR. McCARTER: It might turn to a point where it is a question whether or not that was a proper expenditure.

MR. SMITH: He said he did it to assist him.

THE COURT: What was it in connection with?

A. I have no idea at this time what we did. I sim

ply can't remember everything of that kind. I know we bought an automobile from Mr. Diss and he did what he says. He went and took his affidavit to the transfer and everything else that he says there.

Q. "Checking return stockholders' cards; correcting mailing list and names and addresses"; what does that mean?

A. We sent out a report here in December——

Q. Of what year?

A. In 1922. We sent it out actually in January, 1923, and in each of these reports, was a return card for them to fill in with their proper name and address, number of shares, etc. When those cards were returned to us, we checked them off with the records here.

Q. Item of "To preparing income tax return year 1922, \$150"; that was the income tax return for the income of Mr. Duffy and yourself, as receivers during 1922?

A. We made the return for the entire year.

Q. Including the period before the receivers, and including the period during which you operated as receivers?

A. Yes, we made a combined statement.

Q. For the preparation of that statement, Mr. Gurley charged and was paid \$150?

A. Yes.

Q. Turning to Exhibit 20-C being bill of J. W. Gurley dated, I guess, January 26, 1922, which reads, "To making audit of books Jan. 1st to May 11, 1922, arranging invoices and petty cash vouchers in order, and checking each with the book entry; checking accounts receivable and payable; making closing entries and closing general ledger as of May 11, 1922; preparing balance sheets for receiver's report as of Dec. 31, 1922; also making closing entries and accounts receivable and payable and general ledger as of Dec. 31,

1922; Total bill \$168.00." what was item entitled "Receiver's report as of Dec. 31, 1922"? Rather, I will ask whether this paper I show you is not the receiver's report as of December 31, 1922?

A. It is.

(Received in evidence and marked "Exhibit P-21.")

Q. Inviting your attention to Exhibit 20-D, being bill of Sherman Service, P. O. Box 853, City Hall Station, New York City, November 23, 1922, and reading as follows: "Services rendered in matter of Burnrite Coal Briquette Co. per invoice on file in the office of A. L. Kirby, \$410.54," and I ask you what those services were.

A. Secret service in the factory.

Q. What do you mean by "secret service in the factory"?

A. Investigating.

Q. Investigating what, or whom?

A. The class of labor we had.

Q. I wish you would be a little more specific on that?

A. This is an automatic plant; there isn't an employee here who couldn't entirely ruin us, and it had been done, as I was given to understand, time and time again in this plant, and I wasn't taking any chances. We had to get all kinds of labor to run the plant, and there was no way of checking them up or knowing what their intentions were when they were employed here, and that is the only explanation I can give you. I engaged this service to keep me informed as to the class of labor I was employing.

Q. Did they have men working right in the factory?

A. Yes.

Q. Have you the invoices mentioned?

A. I have them, but they are not here.

MR. SMITH: Will it be necessary to produce them?

MR. McCARTER: I don't think so.

THE COURT: You can produce them?

A. I have them.

MR. SMITH: Why are they not here?

A. They wouldn't be secret very long if they were here.

Q. Turning now to Exhibit 20-E, bill of Puder & Puder dated June 21, 1922, "Services rendered in the matter of books and records in accordance with instructions per complete report on the balance sheet and supplementary schedules as of May 11, 1922 in accordance with complete report dated May 20, 1922, report of complete balance sheet as of May 11th, with supplementary schedule thereon; report of special investigation of various items as shown in the balance sheet and investigation of stockholdings per report of June 3, 1922, report showing complete schedules of common stock of F. M. Crossman, with transfers including above: Deno, 26 days 1 hr.; Harrington, 2 days; total 28 days, 1 hr.: \$25.00, Total \$703.57. Assistants, Wm. Burnett, Eick, McGuire, 8 days 6 hours @ \$20.00, \$177.15; A. H. Puder, G. O. Mortenson, conference, etc. 3 days 3½ hrs. @ \$35.00, \$122.50; Total bill, \$1,003.22." What was that for?

A. For investigation of the books and records of the company at the time of our appointment.

Q. For what purpose was this investigation?

A. It was merely complying with the court order.

Q. For what purpose from a specific standpoint?

A. I don't know, or why.

Q. What was the purpose, for instance, of employing Puder & Puder to report a complete schedule of the common stock of F. M. Crossman with transfers to others?

A. I don't know.

THE COURT: This was all done under advice of counsel?

A. Yes.

Q. Under whose advice?

A. I think, to begin with, there was an order instructing us to investigate and report to the court, and naturally we were told our duties by counsel, and proceeded accordingly. For what specific purpose it all was, I don't know.

Q. Wasn't it for the purpose of getting information, which you embodied in affidavits used in opposition to the efforts made by the courts to have the appointment of yourself and Mr. Duffy, as receivers, set aside?

MR. SMITH: I object. He has already answered your question. He doesn't know what the purpose of it was.

Q. I think I am entitled to an answer.

A. I don't know.

Q. You are unable to state more particularly than you have stated, or make any further explanation of this voucher, P-20-E?

A. That is correct.

Q. Will you look at and explain to me, if you can, voucher being also marked P-20-E, which contains bill of Wm. G. Mahaffy?

A. This is a bill we made out ourselves for a retainer fee in the bankruptcy action in Delaware.

Q. Did you, the receivers, retain Mr. Mahaffy to oppose a petition in bankruptcy filed against the Burn-rite Coal Briquette Co. in the U. S. District Court for the State of Delaware?

A. Yes.

Q. Mr. Mahaffy was the attorney, or one of the attorneys, you retained?

A. Yes.

Q. This voucher is for the retainer paid him for

the services he afterwards performed in that connection?

A. Yes. We never received a bill for this, but I have a cancelled check to show for it.

Q. You did pay Mr. Wm. G. Mahaffy \$250 by the receiver's check No. 196, dated October 26, 1922, for the purposes you have just stated?

A. Yes.

Q. I now invite your attention to Exhibit P-20-F, being bill of Edward Clifton Smith, P. A., dated May 19, 1922, and ask you for what purposes you required an audit of the Burnrite Coal Briquette Co. for the year ending December 31, 1921?

A. When we took charge on May 11th, we found Mr. Smith here auditing books of the company on order by the company, and he stated he was practically finished, and in order not to lose the benefits of his entire work, we engaged him to finish that work, and agreed to pay him for such services as he might perform when working for the receivers.

MR. SMITH: Mr. Smith was the auditor or accountant for the corporation?

A. Yes.

Q. I now invite your attention to Exhibit P-20-G, being bill dated October 24, 1922 of William E. Davenport, and ask you what services Mr. Davenport rendered.

A. I know from the invoices themselves what it is, but I am afraid I can't say what services he rendered.

Q. Do you make the same answer to voucher P-20-H, which is Mr. Davenport's bill dated October 18, 1922?

A. Yes.

MR. SMITH: Is it, or is it not a fact those last two vouchers were sent to you by your counsel, Merritt Lane?



A. Yes, it is a fact.

Q. I now direct your attention to Exhibit P-20-I, being bill of the Mashek Engineering Co. of May 29, 1922, reading, "To making examination of the Burnrite Coal Briquette Co. plant at N. J. R. R. Ave. & Alpine Street, preparing list of new parts required and report on condition of plant, May 20, 1922, \$125.00." What was the purpose of the examination made by this company?

A. We engaged this company to examine the plant so we could know whether it was in satisfactory condition to operate. That is their bill for services of said examination.

MR. SMITH: Why did you engage that particular firm?

A. We were advised they were the engineers who designed and put up this plant.

THE COURT: Did they make any recommendation as to the improvements necessary?

A. Yes, they submitted a very voluminous report.

THE COURT: Were the repairs made based on that report?

A. To a great extent.

Q. At the time you employed the Mashek Engineering Co., did you know there had been litigation between them and the Burnrite Coal Briquette Co. growing out of the installation of this very plant, that they had not properly installed the plant as per the contract?

A. No, I did not.

Q. You knew nothing of this at all?

A. No.

Q. So you had not, at the time you employed the Mashek Engineering Co., ascertained from the books and records of the Burnrite Coal Briquette Co. that there had been that litigation?

A. No, I had no information on it.

Q. How did you hear of, or know of the Mashek Engineering Co.?

A. Their name is on almost every piece of machinery in the place.

MR. SMITH: I show you check No. 315 dated December 5, 1922, made by the receivers to Sherman Service for \$410.54, and ask if that is in payment of Exhibit P-20-D.

A. Yes, it is.

Q. Having completed these vouchers, returning to the item of auditing and investigation, I ask the receivers to produce the desired statement and vouchers in support of item "Legal and professional expenses, \$3480.07," and receivers produce such a statement and annexed vouchers, which I ask be marked in evidence.

(Received in evidence and marked "Exhibit P-22, P-22-A to P-22-V.")

Q. I ask that you look at Exhibit P-22-A, being bill of Elizabeth Coons, re brief Delaware, 90 folios 5 copies @ 40-20-20-20, Sunday work \$108, and tell us what that work was for?

A. That was a bill sent by counsel, Merritt Lane.

Q. You have no further knowledge of it?

A. No.

Q. It came with Mr. Lane's O. K.?

A. Yes.

Q. I show you Exhibit P-22-B, bill of Arthur Harris dated November 29, 1922, services rendered to taking affidavits; tell me what that was for?

A. That was sent me by Mr. Smith with his O. K.

Q. You know nothing more about it?

A. No.

Q. I show you Exhibit P-22-C, bill of Kessler & Kessler, dated February 24, 1923, reading as follows: "Herewith acknowledge receipt of \$50, as and for our fee in Delaware matter. Thanking you we are, very

truly yours, Samuel I. Kessler." Can you tell us what you and Mr. Duffy paid Kessler & Kessler \$50 for?

A. We engaged them to go to Delaware with us in the bankruptcy action.

Q. You had Delaware counsel?

A. Yes.

Q. Did Mr. Smith or Mr. Lane go with you?

A. Yes.

Q. The purpose in going to Delaware was to oppose the petition in bankruptcy filed against this company in the District of Delaware?

A. Yes.

Q. The next voucher, P-22-D, was, I take it, disbursements paid by you and those who went with you to attend the first meeting of creditors of this corporation in the District of Delaware?

A. Yes.

Q. Who was Mr. Berger?

A. He was a stockholder.

Q. Mr. Tylee, who was he?

A. Mr. Tylee was a lawyer representing stockholders.

Q. Why did you pay the expenses of Mr. Berger and Mr. Tylee?

A. I wrote all the names down there. I don't know that I did pay their expenses.

Q. Look at the bill and tell me whether or not this includes the expenses of Mr. Berger and Mr. Tylee.

A. No, except a fee to Mr. Tylee of \$25. The other expenses were not paid by us.

Q. For what services he rendered, would you pay the \$25?

A. We asked him to go representing a number of stockholders from Paterson.

Q. What services did you feel he rendered to the receivership in addition to the legal services being ren-

dered by Mr. Jos. L. Smith, Mr. Samuel I. Kessler and Merritt Lane and Mr. W. G. Mahaffy?

A. We engaged him to go down and I don't know whether he rendered any services or not; he gave his time.

Q. Will you please look at Exhibit P-22-E, which seems to be for expenses to Wilmington, and tell whether that covers expenses for the same trip?

A. That is another trip.

Q. What occasion was that?

A. The hearing on the motion to throw out the bankruptcy; rather, to dismiss the bankruptcy.

Q. I show you Exhibit P-22-F and ask you to look at it and tell me for how much that is for, as there seems to be different sums stated in different places.

A. That has nothing to do with it.

Q. It is for \$90?

A. Yes.

Q. What was this trip to Delaware?

A. Another hearing in the same Delaware bankruptcy proceeding.

Q. This covers the expenses of Mr. Smith, Mr. Lane, Mr. Watson, Mr. Mashek, Mr. Rodgers and a Mr. Montrecelli, does it not?

A. Only the expenses of Mr. Lane, Mr. Smith, Mr. Watson and myself.

Q. Who was Mr. Watson?

A. An attorney from New Brunswick.

Q. Does that include his expenses?

A. No, it does not.

Q. You correct your answer, then, to include only Mr. Smith, Mr. Lane and yourself?

A. Yes.

Q. I show you Voucher P-22-G, bill of Elizabeth Coons, November 6, 1922; what is that?

A. It was sent to me by Mr. Lane, with his O. K. for payment.

Q. I show you Exhibit P-22-H, what is that for?

A. That also was sent to me by Mr. Smith, with his O. K.

Q. Can you give us any reason as to why you included the names of Mr. Watson, Mr. Mashek, Mr. Rodgers and Mr. Montrecelli if you did not charge for their expenses?

A. I made a memorandum of everyone who was at the hearing, and when I gave the piece of paper to Miss Dreier, she included all the names in it.

Q. You are sure the expense voucher only covered Mr. Smith, Mr. Lane, and yourself?

A. Yes.

Q. I direct your attention to Exhibit 22-I, which is a pencilled memorandum on a letterhead of the company, and ask you to explain that voucher.

A. They are the charges of legal expenses of Smith & Slingerland in connection with the mortgage under foreclosure on this vacant property. We have no other voucher from them in, but we can produce the check.

Q. In other words, this \$110 is something you had to pay to Smith & Slingerland, who represented the complainant in the foreclosure suit, upon the mortgage on the adjoining property, for their taxed costs?

A. Yes.

Q. I direct your attention to Exhibit P-22-J, being a certified copy of an order of this Honorable Court made in this cause on February 2, 1923, reading as follows: "This matter being opened to the court by Merritt Lane and Joseph L. Smith, of counsel with the receivers, and upon reading and filing petition herein praying for counsel fee on account of the receivers, it is on this second day of February, 1923, ordered that there be allowed to Merritt Lane counsel fee for the receiver of \$1,000; and to Joseph L. Smith, on account of counsel fee for the receiver, \$1,000, and that

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the receivers do forthwith pay the respective sums. Signed, Charles F. Lynch, Judge." Pursuant to this order, you made those payments?

A. Yes.

Q. I invite your attention to Exhibit P-22-K, being bill of Joseph L. Smith, dated February 15, 1923, to disbursements in the above \$130.81. You received that bill with his O. K.?

A. Yes.

Q. I direct your attention to Exhibit P-22-L, being bill of Elizabeth Coons of April 20, 1923, and ask what you can tell me about that.

A. It was a bill sent from Mr. Lane's office with his O. K.

Q. I suppose the same applies to P-22-M, being bill of Mr. Cross, law printer?

A. Yes.

Q. Same applies also to P-22-N, being bill of Elizabeth Coons of September 24, 1923?

A. Yes.

Q. The same also applies to P-22-O, being bill of A. W. Cross, law printer, of December 10, 1923?

A. Yes.

Q. The same applies to the Exhibit P-22-P, being bill of Michael W. Mintzel for \$58.80, September 10, 1923?

A. Yes, correct.

Q. What can you tell about P-22-Q, being bill of Elizabeth Coons for \$121.25, November 1, 1923?

A. That was a bill sent to us from Merritt Lane's office with his O. K.

Q. The same applies to 22-R, which is Merritt Lane's bill for disbursements dated December 1, 1923?

A. Yes.

Q. And the same is true with respect to Exhibit P-22-S, being bill of Jos. L. Smith, dated November 30, 1923?

A. Received from Mr. Smith with his O. K.

Q. Do you know anything more about it, except as it states?

A. No.

Q. The same is true with respect to P-22-T?

A. Yes.

Q. What about the bill of Marion W. Ogden for \$1.20?

A. That is the same.

Q. What can you tell us about Voucher P-22-U; bill of Elizabeth Coons of January 9, 1924?

A. That was sent by Merritt Lane with his O. K.

Q. I call your attention to Exhibit P-22-V, being bill of February 6, 1923, for \$112.50, and ask whether that was not paid to the Fidelity Union Trust Co. as that company's annual fee of \$150 as trustee and register of bonds of the Burnrite Coal Briquette Co. for year ending February 23, 1923.

A. That is correct.

Q. I ask the receivers to produce an explanation of items making up the entry on the page headed "Analysis of Cash Disbursements, Bank Notes, \$25,-790," and a statement is produced which I will have marked in evidence.

(Received in evidence and marked "Exhibit P-23.")

Q. Is it correct that the item of August 2, 1923, Mashek Engineering Co. for \$790 has been paid?

A. Yes.

Q. What were the proceeds of that loan, or indebtedness, used for?

A. We purchased material from them on a draft attached to a bill of lading, and gave them this trade acceptance in lieu of cash, and got the goods, and in thirty days they had the money.

Q. What were the goods?

A. Chain for the ovens.

Q. Why was that chain bought from the Mashek Engineering Co.?

A. They were the only ones who had the patent. They were the makers of that particular chain, so far as we know.

Q. The dates opposite the two items of the Merchants & Manufacturers Bank, Exhibit P-23, stand for what?

A. That is the date those certificates were made out.

Q. Those were certificates still unpaid?

A. Yes.

Q. What were the proceeds used for?

A. To pay off taxes——

Q. Can you tell how much was used for taxes?

A. I would say approximately \$6000.

Q. Does the amount of the certificates used to pay off the taxes appear anywhere in the account accurately?

A. I can state that subsequent, or after I secured this money from the bank, I paid off back taxes, fire insurance, and bills for repair parts and upkeep of the plant.

Q. Can you look at any records or documents and refresh your recollection and tell us exactly what part of the \$25,000, represented by the certificates outstanding, was spent by the receivers for the payment of taxes on the property of the Burnrite Coal Briquette Co.?

MR. SMITH: He has already answered that question.

A. These items show payment of \$5188.65 for taxes and assessments, interest and penalty.

Q. Were there any assessments other than the annual taxes?



A. Yes, paying assessments; \$168.40 personal taxes for 1921. There had never been any taxes paid as far as we could see.

Q. That figure you have given, \$5188.65, is the total amount of the proceeds of the unpaid receivers' certificates outstanding used for the payment of taxes?

A. I can't answer that.

Q. How much of the balance of receivers' certificates outstanding, and unpaid, were used for the payment of, as you say, insurance?

A. I can't say that either.

Q. When you say "insurance," what do you mean, fire insurance, or what?

A. Our chief insurance, outside of liability, fire insurance.

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STATE OF NEW JERSEY, {  
COUNTY OF ESSEX, { ss.:

MARION C. BROOKER, being duly sworn, according to law, on her oath, deposes and says that she will well and truly take stenographically and reproduce in type-writing the testimony taken in the above entitled matter.

Sworn to and subscribed }  
before me, this }  
day of , 1924. }

---

I, CHARLES M. MASON, referee in bankruptcy, do hereby certify that the accompanying testimony was taken by the above stenographer selected by me and I believe it accurately sets forth the evidence given.

*Referee in Bankruptcy.*

SPECIAL MASTER HEARINGS ON RECEIVERS'  
ACCOUNTS (IN EQUITY).

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Transcript of testimony taken in the above entitled matter on the twenty-fifth day of March, 1924, before his Honor Charles M. Mason, referee in bankruptcy, at the Bankruptcy Court, Room 201, Essex Building, Newark, New Jersey.

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Appearances: MR. GEO. W. C. McCARTER, attorney for acceptants;  
MR. JOS. L. SMITH, attorney for receivers;  
MR. A. L. KIRBY and MR. J. P. DUFFY, receivers.

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ALFRED L. KIRBY, recalled.

DIRECT EXAMINATION.

By MR. McCARTER:

Q. If I remember aright, we concluded the last hearing by my asking you if you could produce a statement showing in detail exactly what insurance premiums you say the proceeds of the receivers' certificates were used for?

A. Yes.

Q. Have you such a statement?

A. I have given an itemized statement of the expenditures of the entire \$25,000.

Q. Witness produces statement, which I would like to have marked in evidence.

(Received in evidence and marked "Exhibit P-24.")

Q. I do not quite understand this P-24, having a total of \$28,286.11, and the total certificates are something less than that.

A. Yes. It is quite impossible for me to show you, in detail, the exact amount of \$25,000, so I show you what I did with \$28,000.

Q. How do you determine that the items on P-24 were expended out of the proceeds of the receivers' certificates?

A. Because the expenditures were made as we received the money from the bank.

Q. Some of these expenditures were made out of some other funds, were they not?

A. Yes.

Q. Are you able to tell us now, which of the expenditures were made out of those additional funds over and above the total proceeds of the certificates?

A. I couldn't do that, but the figures can be reduced by striking out sufficient of these to bring it to \$25,000.

Q. These items under No. 7 represent charges for the months of May, June, July, August and October, 1923. Just what do you mean by them?

A. They are installation charges; expenses we had in installing the machinery that we purchased at that time.

Q. It is the expense of installing machinery itemized under No. 6?

A. Yes.

Q. And those installation charges are, I suppose, a portion of this payroll for those months?

A. Yes, but do not include any of that part of the payroll covering office help, etc.; only labor engaged in the installation.

Q. What new equipment and repairs to machinery does No. 6 refer to?

A. They are—it is all itemized in another itemized list that I got out, that you have not come to as yet.

Q. Do you refer to the vouchers which go to make up the item on part of this account headed "Analysis of cash disbursements, repair parts, additions and improvements, \$32,224.92"?

A. Yes.

Q. Item No. 4, fire insurance premiums, total \$1055.77 was for fire insurance on the buildings and contents of this plant?

A. Yes.

Q. Covering what period?

A. That is only part of the insurance; only what we disbursed or actually paid for.

Q. Covering what period?

A. I presume it was renewals from May 11th on.

Q. 1922?

A. No, 1923, we already had one year of fire insurance.

Q. 1923?

A. Yes, from then on.

Q. The repairs to the roof of the building, when were they made?

A. After receipt of this money.

MR. SMITH: Did you receive the proceeds of these receivers' certificates from the bank for the specific work as shown in Exhibit P-24?

A. Yes.

Q. Will you explain why you cannot eliminate the excess of Exhibit P-24 over the actual proceeds of the certificates, and tell us which items on P-24 were not paid for out of the proceeds of the certificates?

A. Because every dollar we received went through the cash book, and was deposited in the bank, and to account for exactly \$25,000 in that particular money, would necessitate keeping a separate account and all that, which we didn't do.

THE COURT: That money was included in that?

A. Yes.

Q. I turn to the item, which as yet has not been marked in evidence, dated March 28, 1923, being a bill to the receivers in favor of Robert H. Richards and Wm. G. Mahaffy for \$4000 for professional services from October 24, 1922, to date, and would like to have that marked.

(Received in evidence and marked "Exhibit P-25.")

Q. What were those professional services?

A. They represented—they were engaged by the receivers and represented the receivers in the bankruptcy action brought against the company in Delaware.

Q. It is the same bankruptcy action which you have testified to before?

A. Yes.

Q. I have asked you to produce the vouchers which go to make up item "Repairs, parts, additions and improvements, \$32,224.92." You produce a bundle of vouchers prefixed by a statement, which statement I would like to have marked in evidence.

(Received in evidence and marked "P-26.")

Q. I ask you to look at the balance sheet attached to this account, and direct your attention particularly to the column at the extreme right hand, "Increase and decrease."

A. Yes.

Q. The first figure in that column of \$9368.90 represents your statement of the increase in total current assets?

A. Yes.

Q. And that is made up by the total of three items: cash in bank and on hand; notes and accounts receivable; and inventories, so far as that total exists, the total of the same three items under heading "Balance sheet at May 11, 1922 as it should be drawn according to investigation of receivers"?

A. Yes.

Q. I notice balance sheet as of January 31, 1924, contains total inventories of \$16,900.86.

A. Yes.

Q. Where are the items for that?

A. They are in the general ledger.

Q. Will you turn to the page of the general ledger on which the total will be entered by items making up the total of \$16,900.86 as of January 31, 1924?

A. Yes.

Q. You produce page 63 of the general ledger, Exhibit P-6?

A. Yes.

Q. What is the basis for the figures or amounts at which you enter the items called "Purchase" on this page of the ledger?

A. That is what we purchased, from our purchase ledger.

Q. For example, under December 31, 1923, "Purchase 36—\$1,110.81," just what does that entry mean?

A. That is the total figure of material purchased during that month.

Q. Month of December, 1923?

A. Yes.

Q. That is the exact amount which you receivers paid people from whom you purchased, or agreed to pay?

A. Yes, agreed to pay.

Q. Is that true with each entry called "purchase"?

A. Yes.

Q. The cash entries represent actual cash receipts?

A. Yes.

Q. Going down in the column, the increase column, there is opposite "building increase" the entry \$6455.12, I wish you would refer to whatever books are

necessary to show you just how that increase entry is arrived at.

A. This is it.

Q. You produce Exhibit P-6, showing page 5 thereof?

A. Yes.

Q. Will you look at page 5, and any other books you need, and show me just what items of increase are referred to?

A. We start on May 11th with a fixed amount and as we receive the bills covering improvements to the buildings, we would add it to that amount.

A. I notice that item on page 5 of May 11th is \$135,662.34, whereas the amount for buildings on May 11th, under column headed "Balance sheet as of May 11th, as it should be drawn according to investigation of receivers" is \$154,932.09; will you explain that?

A. When we opened up these books, Mr. Gurley made entries from the balance sheet furnished by Mr. Deno, instead of making the entries according to this, but it makes no difference between the beginning and the end. We simply use another balance sheet in making up this report.

Q. Which is the correct one?

A. This is the correct one.

Q. By this you indicate the one attached to the receivers' report?

A. Yes.

Q. What is incorrect about page 5 of Exhibit P-6?

A. The starting amount.

Q. You say that the first entry, under date of May 11th, on page 5 of Exhibit P-6, is wrong, as it differs from the amount of \$154,932.09 on the balance sheet attached to your account?

A. Yes.

Q. How did you arrive at the figure of \$135,662.34 for the first item on page 5?

A. Through the balance sheet furnished by Mr. Deno on my request, when I asked him for the set of books to be started. I can produce that. I asked Mr. Deno to draw up a balance sheet that would serve for the entering figures of these different accounts, such as a start for buildings, machinery, etc., eliminating all false entries of the old books of the company, and by false entries, I mean such items of expense that were capitalized, and I was endeavoring to arrive at the real purchase figures of these various items, and here is the balance sheet that was drawn up.

Q. By Mr. Deno?

A. Yes.

(Received in evidence and marked "Exhibit P-27.")

MR. SMITH: Mr. Kirby, will you explain what you mean when you say "Certain expenses were capitalized in the books" when you were appointed receiver?

A. Would you like me to state those amounts?

Q. Yes.

A. The building account had charged to it an item of expense amounting to \$37,437.68; the machinery account had an item of expense made up of organization expense and commissions paid for the sale of stock, amounting to \$113,894.44. Those are two of the items.

Q. Did you instruct Mr. Deno to eliminate items of expense you have just told us about?

A. Yes, for our books.

Q. What were the items of expense of \$37,437.68 that were charged on the company's books to the building account?

A. Organization and commissions on sale of stock.

Q. The same items charged against the ledger account?

A. It was distributed together with a loss of \$77,000 for the first year, which was capitalized and put in as an asset of the company.



MR. SMITH: Do you know who prepared that financial statement for the company?

A. Mr. Smith, the accountant.

Q. Have you, other than the books of the old company, any balance sheet of the old company which you can produce as of May 11, 1922, which will show the various items which are charged to building and machinery?

MR. SMITH: I think there is a copy of it filed; an affidavit.

MR. McCARTER: That doesn't do us much good now.

MR. KIRBY: Puder & Puder were the only ones who drew off a statement as of May 11th.

Q. I direct your attention to item of building on Exhibit P-27, of \$182,180.95, and ask you to compare with that the item of building on the balance sheet attached to your report, and account, headed "Balance sheet of May 11, 1922, actual figures as shown by the books of the company, item of building, \$192,369.77," and ask you how you can explain this difference of approximately \$10,000?

A. I cannot explain the difference, but I wish to reiterate that the amounts as starting off these accounts, have absolutely nothing to do with the report itself, in that the difference at the beginning and closing discloses the increase or decrease in these accounts.

Q. Following up that statement you have made, I ask you to explain how it is that if the gain or loss, the increase or decrease, is shown in the extreme right-hand column of the balance sheet attached to your account, and is arrived at by taking the difference between the various items under the column "Balance sheet of May 11, 1922," if it would be true according to the investigation of the receivers, and comparing that with the balance sheet of January 31, 1924, and if the entry in your book is a different entry from the

entry in the balance sheet of May 11, 1922, in the account, why it does not make a difference in the proper item of increase or decrease to be entered in the column at the extreme right. Do you understand the question?

A. Yes, I understand the question. It doesn't make any difference in the amount for this reason, that in making up this report, I didn't rely upon the starting entries of these books, but I went back to the accounting that was made by Puder & Puder, and submitted to the Court, as the exact and proper accounting, not depending upon this sheet that was drawn up for purposes of opening these books, and the difference between my starting amount on buildings of \$135,662.34 and the closing amount of \$142,127.46, would equal that amount of increase, namely \$6465.12. That is the only way I can explain that.

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STATE OF NEW JERSEY, { ss.:  
COUNTY OF ESSEX, }

MARION C. BROOKER, being duly sworn, according to law, on her oath deposes and says that she will well and truly take stenographically and reproduce in type-writing the testimony taken in the above entitled matter.

Sworn to and subscribed }  
before me, this }  
day of 1923. }

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I, CHARLES M. MASON, referee in bankruptcy, do hereby certify that the accompanying testimony was taken by the above-named stenographer selected by me and I believe it accurately sets forth the evidence given.

*Referee in Bankruptcy.*

HEARING ON RECEIVERS' ACCOUNT (IN  
EQUITY).

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Transcript of testimony taken in the above-entitled matter on the fifth day of April, 1924, before his Honor Charles M. Mason, Referee in Bankruptcy, at the Bankruptcy Court, Room 201 Essex Building, Newark, New Jersey.

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Appearances: JOS. L. SMITH, Esq., for receivers;  
GEO. W. C. McCARTER, Esq., for acceptants.

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ALFRED L. KIRBY, recalled.

DIRECT EXAMINATION.

By MR. McCARTER:

Q. I am now directing your attention to Exhibit P-26, which you will recall is the statement and items making up the total amount, according to the page of your account headed "Analysis of Cash Disbursements, repairs, parts, additions and improvements, \$32,224.92," but which total, according to your addition on P-26 is \$33,900.15. Can you, for the sake of information, explain that difference—why you have only claimed in your account \$32,224.92 instead of the larger figure?

A. I can explain in this respect—when we made up our account, we had reference to the books, but when we drew off these vouchers, we went through our bills, and everything that covered repair parts or additions, we took out, and after we got them together, we added them up, and you will find I have more bills there than I claim for in my report.

THE COURT: Are they included under some other heading?

A. Not necessarily.

MR. SMITH: Do you now, in this accounting, claim for repair parts, additions and improvements, the additional sum between \$32,224.92 and \$33,900.15, which would be the sum of \$1675.32?

A. Yes.

Q. In other words, you wish to amend your account, under the heading of "Analysis of Cash Disbursements," by adding to this item the sum of \$1675.32?

A. Yes, but I was incorrect when I answered Mr. Mason that the amount would have to be deducted from some other account.

Q. Referring to the general ledger, Exhibit P-6—machinery and building, machinery account on page 1, buildings account on page 5; do you know what of this item of \$32,224.92 was new machinery? By "new," I mean machinery that did not exist before. Some of it was replacement of wornout machinery, was it not?

A. Yes.

Q. Are you able to say, without going through the bills, if any of it was new machinery as distinguished from replacement of wornout machinery?

A. Do you mean new parts for wornout machinery?

Q. New parts, or new machines.

THE COURT: Were there any new machines?

Q. Are any of these bills, invoices for entirely new machines which were not for replacing?

A. Yes, I recall immediately, a storage tank that we purchased. An extra storage tank that was absolutely new, and the changes that were made in the bins were all entirely new machinery, in that they had a flat bottom to the bin, and we put in a sloping bottom. We bought loader. I cannot say whether that was under tools and implements or not. As far as machinery goes, I think would rest on that.

Q. So that the bulk of this item of \$32,000 plus, was for replacements, rather than for installation of new machinery?

A. Yes, I will say so.

Q. I notice the invoice under No. 788, which is the Mashek Engineering Co. bill dated March 20, 1923, contains at the bottom the following "Segments job 113 Plymouth Street, Jersey City, rust proof, stored free of cost to you. Will be delivered to your factory at your request." Where are those now?

A. Those are on the place.

THE COURT: You mean on the premises?

A. Yes.

Q. This invoice No. 788, which I have just referred you to, is the invoice on which the credit appearing on No. 791 invoice was allowed?

A. Yes, that is correct.

Q. I show you invoice No. 334 of the Taylor Whar-ton Iron & Steel Co. for a total of \$575.60, being bill or invoice dated November 11, 1922, for sixteen rolled segments. Are these the same segments referred to in the invoice to which I called your attention before?

A. No, these were new segments, and the seg-ments referred to in the other bill were from the ma-chinery, taken off at the time these were put in, and sent over to Mashek to be reground. Even the grinding of these segments may have been included in the Mashek bill.

Q. I show you invoice No. 65, being bill of Grice Bros. of August 17, 1922, for \$700, which says merely, "For work done, according to proposal of August 10, 1922," with no further explanation. Can you tell what that was for?

A. For a new roof on the oven building.

Q. To what account in ledger P-6, were incidental repairs to machinery charged?

A. Machinery account.

Q. And incidental repairs to building were charged to building account?

A. Yes.

Q. They appear, therefore, in your balance sheet attached to the account (I am referring to the balance sheet of January 31, 1924) under what entry?

A. Under buildings and machinery.

Q. Some of the vouchers I noticed were for railroad rails and creosoted ties; I suppose they will appear on this balance sheet, which I just referred to, under the heading of "Railroad siding"?

A. Yes.

Q. The mortgage on land, which the comparative balance sheet shows to have been paid off, is the mortgage on the vacant land adjoining the factory to the north, is it not?

A. Yes.

Q. It is not mortgage on the factory premises—that has not been paid off?

A. No.

MR. SMITH: That property was part of the corporation's property that the mortgage was paid off on, was it not, Mr. Kirby?

A. Yes.

Q. I notice that the comparative balance sheet shows assets increased \$73,861.24, and liabilities increased \$61,335.44, and a net increase entry of \$12,525.80. Those combinations by which several increases therein mentioned are obtained, are from a comparison of the balance sheet of January 31, 1924, with the figures under the column headed "Balance sheet of May 11, 1922, as it should be drawn according to investigation of receivers," are they not?

A. Yes.

Q. A comparison of the balance sheet of January 31, 1924, with the balance sheet taken in actual figures,

as shown by the books of the company, would not show any net increase?

A. No, the way I have drawn it it would not, but if I put in a lot of intangible assets, and a couple of million dollars worth of stock in a company that doesn't exist, I would be able to show an increase in assets.

Q. You say if there were included in your balance sheet of January 31, 1924, all of the asset entries that were included in the company's balance sheet as of May 11, 1922, there would be an increase in assets?

A. Yes, because there would be then my original entry figures and the additions that we have made would be added thereto, and the increase would be evident.

MR. SMITH: Would that not mean you have to capitalize the liabilities?

A. It would mean we would have to capitalize losses, as the corporation did.

Q. In your balance sheet, as of January 31, 1924, you have capitalized the various repairs to the buildings, machinery, and railroad siding, which are evidenced by the various invoices?

A. Yes.

Q. You wish to convey by this report and account, which is now pending before the Master on a reference, that the result of the receivership, down to January 31, 1924, is that there has been a profit in the sum of \$12,525.80?

A. No, I only wish to convey by that balance sheet, that the fixed—that the assets as shown there have been increased by the receivers, but I don't tell in that particular balance sheet, other moneys that we expended to the benefit of the corporation.

Q. Am I to understand then, that it is not the intention of the receivers, by this report and account,

on any page, or all pages together, to show that the receivership has resulted in a profit to the company?

A. Yes, but it has resulted in a far greater profit than \$12,000. The report and other sheets will show that.

Q. Why don't you show, on this balance sheet, the exact and total sum in dollars and cents, in which you claim your receivership has resulted in a profit to the company?

A. Well, for example, I would say in the first place, this is a balance sheet of the books, and it would be a very mixed up affair if I attempted to put in there the items of, for example, taxes, in the amount of \$5000, paid on such and such a date. I wouldn't know how to set a balance sheet up according to that.

Q. Can you point out, anywhere in the receivers' report and account, not limiting you to your balance sheet, anywhere where there is stated, in dollars and cents, the sum in which the receivers contend the receivership has benefited the corporation?

A. Not outside of that balance sheet.

MR. SMITH: You can, Mr. Kirby, show, can you not, where the receivers have expended moneys for the benefit of the corporation?

A. Yes, I could draw up a sheet showing all those items, by picking them out.

THE COURT: How long would that take you?

A. About a day, I guess.

MR. SMITH: We will prepare such a statement.

Q. You have just said that the receivers' operations, from first to last, have resulted in a profit to the company. Having that in mind, I ask you how is it, then, that the profit and loss account, on page 157 of Exhibit P-6, shows, on January 1, 1924, a loss of \$84,013.67?



A. Because that item includes an item for depreciation for \$45,000. That is just one item. There are also expenses that were necessary for us to carry on our books for income tax return.

Q. These books, including Exhibit P-6, and particularly this exhibit, are true and accurate?

A. Yes, sir.

THE COURT: Was that account kept for figuring income tax?

A. Yes, and as we naturally supposed this company would be turned back to its original owners some day, we kept the books as if they had kept them, if they were here. We have down there dividends on preferred stock, and in my estimation, it would be an enormous piece of work for them to have to do that if they had to come in here again after a lapse of two years or more.

Q. This profit and loss account does not include any expenditures for machinery repairs and repairs to buildings and railroad siding?

A. This is just an account of the actual profit and loss, and these amounts are taken from our monthly or annual statements, made up from all of the other accounts. I might add that, even though we didn't use the depreciation item, and we made our tax return, we would not be liable for an income tax, but if we failed to take all allowances in these last two seasons, that is December, 1922 and December, 1923, when you came to put in a tax return for 1924, this enormous item of depreciation would be questioned.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

MARION C. BROOKER, being duly sworn, according to law, on her oath deposes and says that she will well and truly take stenographically and reproduce in type-writing the testimony taken in the above entitled matter.

Sworn to and subscribed }  
before me, this }  
day of 1923. }

---

I, CHARLES M. MASON, referee in bankruptcy, do hereby certify that the accompanying testimony was taken by the above named stenographer selected by me and I believe it accurately sets forth the evidence given.

*Referee in Bankruptcy.*

HEARING ON RECEIVERS' ACCOUNTS  
(IN EQUITY).

---

Transcript of testimony taken in the above-entitled matter on the eleventh day of April, 1924, before his Honor Charles M. Mason, referee in bankruptcy, at the Bankruptcy Court, Room 201, Essex Building, Newark, New Jersey.

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Appearances: MR. JOS. L. SMITH, attorney for receiver;  
MR. GEO. W. C. McCARTER, attorney for acceptants.

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ALFRED L. KIRBY, recalled.

DIRECT EXAMINATION.

By MR. McCARTER:

Q. Have you prepared the statement which was agreed at the last hearing was to be prepared?

A. I have.

Q. I offer in evidence, statement prepared by the witness.

(Received in evidence and marked "Exhibit 1," April 11, 1924.)

Q. Referring now to this Exhibit 1 of this date, the first item, "Increase in the Assets, \$12,525.80," is the net increase in that account as taken from the comparative balance sheet attached to your account?

A. Yes.

Q. The next item, "Auditing and Investigating \$2511.86," is the same item as "Auditing and Investigating \$2511.86" included in your analysis of cash disbursements attached to your account?

A. Yes.

Q. The next item on Exhibit 1 of this date, "Bonds and insurance \$5206.90" is the same as the item "Bonds and insurance \$5206.90" on your analysis of cash disbursements?

A. Yes.

Q. The next item on Exhibit 1 of this date, of "Accounts Paid off \$7920.15" is the same as accounts payable, prior to May 11, 1922, \$7920.15, on your analysis of cash disbursements?

A. Yes.

Q. The next item on Exhibit 1 of this date, "Interest account \$922.99," is the same as interest account \$922.99 on your analysis of cash disbursements?

A. Yes.

Q. The next item on Exhibit 1 of this date, "Legal and professional expenses \$3480.07," is the same as legal and professional services \$3480.07 on your analysis of cash disbursements?

A. Yes.

Q. The next item "Interest on bonds \$280" is the same as interest on bonds \$280 on your analysis of cash disbursements?

A. Yes.

Q. The next item on Exhibit 1 of this date "Demurrage caused by bankruptcy action \$1987" is the same as item of demurrage for \$1987 on your analysis of cash disbursements?

A. Yes.

Q. The item of "State of Delaware Tax \$200" on this exhibit is the same as item "State of Delaware Tax \$200" on your analysis of cash disbursements?

A. Yes.

Q. The next item of "expenses May-July, restraining order \$2458.09" is the same as the item so described in your analysis of cash disbursements?

A. Yes.

Q. The next item on Exhibit 1 of this date is under the heading of "Accounts payable, insurance \$2566.84" under your analysis of cash disbursements, it is listed as item of "Insurance \$2566.84" attached to your account?

A. Yes.

Q. The next item on Exhibit 1 of "legal and professional expenses \$157.40" is the same as legal and professional expenses \$157.40 under heading of analysis of cash disbursements?

A. Yes.

Q. The next item of "Taxes for 1923, \$3041.84" is the same as item of taxes \$3041.84 on your analysis of accounts payable?

A. Yes.

Q. The next item on Exhibit 1 of this date, "Interest account \$127.13" is the same as interest account in that amount on your analysis of accounts payable?

A. Yes.

Q. The next item of "Advertising account \$630.14" on Exhibit 1 of this date is the same as advertising \$630.14 on your accounts payable?

A. Yes.

Q. The next item on Exhibit 1, "Delaware attorneys \$4,000" is the same as the item "Mahaffy & Roberts, attorneys for the receivers in Delaware action in bankruptcy proceedings, \$4,000," under accounts payable?

A. Yes.

Q. Under the heading of bills payable on Exhibit 1 of this date, there is an item of advertising for \$5876.73, where does this appear in your account?

A. Under the heading "Note to Scheck."

Q. Does this appear under the heading of receivers' current loans and trade acceptances payable January 31, 1924, as follows, "Sheck Advertising Co. \$194, 6% 1 month, \$294, \$5876.73"?

A. Yes.

Q. Where in your account does the next item on Exhibit 1, namely, "Amount of royalties that would have been due Crossman \$4968.45" appear?

A. It doesn't appear.

Q. Explain the item on Exhibit 1.

A. In drawing up this report, I endeavored to show what the receivers feel that they made in the way of profits, or in the way of savings for the corporation.

Q. By "this report" you mean Exhibit 1 of this date?

A. Yes, and as soon as we took over all the affairs of this company, we immediately notified Mr. Crossman we would not operate under his formula and would not be responsible for royalties due him. I, therefore, naturally feel we saved for the stockholders of this company that amount of \$4968.45 which would otherwise have been, according to terms of the agreement between the corporation and Mr. Crossman, credited to his account, and naturally would thereupon become a debt against the corporation.

Q. The question of whether or not Mr. Crossman is entitled to the royalties in this amount, or any amount from the Burnrite Coal Briquette Co., or from its receivers, has not been judicially established?

A. No.

Q. Summarizing Exhibit 1 of this date, Mr. Kirby, the exhibit is designed to show, is it not, that in the opinion of the receivers, the receivership has resulted in a net profit to the corporation of \$49,008.41?

A. Yes.

THE COURT: Have you put anything in there you have saved or done for the benefit of the company in the line of improvements or repairs?

A. Yes, in the first item, "Increase in assets," this also includes paying off the mortgage on this land.

MR. SMITH: I direct your attention to the items about which Mr. McCarter questioned you, relative to certain disbursements which were capitalized for the corporation, and ask if you will kindly explain in detail those items.

A. You want me to point out items that I termed false entries in the books of the old company?

MR. SMITH: Yes.

A. On page 136 of the journal, there appears an entry of \$183,361.50, P-24, discount on stock, due organization expenses P-84, \$183,361.50, as per ledger account \$158,361.50, due Nat Chayes \$25,000. From this entry it appears that discount allowed on the sale of stock amounted to \$158,361.50, and was carried on the books and in statements issued by the corporation as a deferred asset.

Q. To whom were the statements issued?

A. To the stockholders.

Q. By whom?

A. The president and treasurer.

Q. Who were they?

A. Mr. Crossman and Mr. Rodemann. Also the amount of \$25,000 referred to above as paid to Nat Chayes was paid, according to the minute book, for negotiating a certain contract with Levine & Ellis. This amount was also capitalized and carried as a deferred asset. Also on page 136 of the journal kept by the corporation, there is an entry of \$57,052.17, P-88, commissions on stock sales, organization expenses P-84, \$57,052.17. It is evident that this amount was to be capitalized by charging it to organization expenses, and it was carried on the books and shown on the statement as deferred and tangible assets. The item following on the same page of the journal is \$60,006.77, P-105. General construction due organization expenses P-84, \$60,006.77. Underneath that entry is the explanation: "F. M. Crossman, \$10,000; H. C. Rode-

mann, \$35,000; cash expenditures, \$15,006.77." I take it from that entry that the personal expenses of Crossman and Rodemann, presumably incurred in floating this organization, together with the unexplained item of "Cash expenditures, \$15,006.77," amounting in all to \$60,006.77, was charged to general construction and thereby capitalized, and the amount of \$60,006.77 was further disposed of by charging \$45,005.08, P-33, to machinery, and \$15,001.69, P-76, to buildings, with the notation to apportion the cost of the plant. I stated that this was a false entry, as I could not see any justification for increasing the fixed asset "Machinery Account" in amount of \$45,005.08, and increasing the asset "Building Account" \$15,001.69, to dispose of this \$60,006.77, which apparently was an expenditure by Crossman and Rodemann. The next item of improper and false entry that I referred to will be found on page 146 of the journal as kept by the corporation, where, in order to maintain their contention that the plant was not in operation until the beginning of the year 1921, in spite of the fact that the plant had actually been in operation and sales made regularly and continuously every month, including May to December—

THE COURT: Of what year?

A. 1920, and the total tonnage sold for the year 1920 was 21,049 tons, a production that has never been equalled in any year since. This entry, in spite of this contention, amounts to \$267,772.23, P-105, entitled, "General construction, due constructive labor," and includes all the running expenses for the year 1920, including office salaries, labor, anthracite coal dust, \$59,093.03; binder, \$51,806.78, etc., and according to explanation under this account, this was charged to general construction "to transfer total cost of overhead during construction of plant." This amount of \$267,772.23, representing the entire operating expenses for the year of 1920, was taken in its entirety and



charged to general construction, and this same account was given a credit of \$190,755.85, which represented the amount of money received from the sale of briquettes during this year 1920. The difference between this charge and credit is \$77,016.38, namely, the actual operation loss for the year 1920.

MR. SMITH: On what page of the journal is this?

A. On page 146. And this amount of the total operating loss was capitalized and distributed \$57,762.29 to machinery account and \$19,254.09 to building account, thereby showing a substantial increase in these two items of fixed assets, whereas it should have been charged to profit and loss.

By MR. SMITH:

Q. It should have been an operating loss?

A. It should.

Q. Mr. Kirby, will you explain the difference between the opening entries in the general ledger and the corresponding accounts set forth in the balance sheet of January 31, 1924, under the heading, "Balance sheet at May 11, 1922, as it should be drawn according to investigation of receivers"?

A. That was a matter which came up at previous hearings, and I have prepared a statement in explanation. In explanation of the difference between the opening entries in our general ledger and the corresponding accounts set forth on the balance sheet of January 31, 1924, under the heading, "Balance sheet at May 11, 1922, as it should be drawn according to investigation of receivers," I wish to state that at the latter part of June, 1922, I asked Mr. Deno to draw up a balance sheet, eliminating as far as possible, all false entries found in the books of the corporation so that we could open a complete set of books to show the conduct of the business of the receivers. After the order of July 13, 1922, I engaged Mr. Gurley to open a set of books,

handing him the balance sheet which was made up by Mr. Deno, and is marked Exhibit P-27, and I instructed Mr. Gurley to use these figures for his original entries. Mr. Gurley opened the books as of May 11, 1922, the date the receivers took charge, and it was not until the receivers drew up their report for the Court, in February, 1924, that we discovered that Mr. Deno had drawn up the balance sheet as of June 30, 1922. I thereupon disregarded the original entries and submitted a balance sheet showing an exact copy of the books of the corporation as of May 11, 1922, under the heading "Balance sheet at May 11, 1922, actual figures as shown by the books of the company"; second, balance sheet as drawn up by Mr. Deno for the receivers dated January 2, 1923, and shown on our report under heading "Balance sheet at May 11, 1922, as it should be drawn according to investigation of receivers"; and third, balance sheet as of January 31, 1924, figures of which are the same as those of May 11, 1922, with the addition or subtraction of amounts shown in the general ledger as kept by the receivers, for example, building account, page 5 of the general ledger, discloses original entry as of May 11, 1922, of \$135,662.34, and total figure of \$142,127.46. After we subtract the original entry from the final entry, we find an increase of \$6456.12 as shown on the receivers' report dated January 31, 1924, under heading, "Increase black, decrease red." This amount, \$6465.12, added to the figure \$154,932.09, shown under heading, "Balance sheet at May 11, 1922, as it should be drawn according to investigation of receivers," gives us the figure of \$161,397.21, shown on the balance sheet of receivers' report as of January 31, 1924. When the error in these original entries was discovered, it was too late to change the amounts in our general ledger, and consequently, the procedure outlined above had to be formed in arriving at the figures for all of the accounts known

as "fixed assets"; however, the figures shown in column, "Increase black, decrease red," would remain the same, regardless of any figures we may have used for our original entries.

Q. Who was the certified public accountant for the corporation who prepared the books and made the entries you testified to this morning?

A. Mr. Edward Smith.

Q. During that time, who was the president of the corporation?

A. Mr. Crossman was.

Q. And the treasurer?

A. Mr. Rodemann was treasurer.

Q. You were appointed receiver for the creditors and stockholders of this corporation?

A. Yes.

Q. I want to direct your attention to the bankruptcy proceedings in Delaware and ask you to tell us why it was that the receivers incurred those obligations that are stated in their account.

A. Being appointed in an action in equity, on complaint of a stockholder, we felt we were the representatives of the stockholders and creditors and when it was brought to our attention that the company had been thrown into bankruptcy in Delaware, by action of certain members of the board of directors, in spite of the fact that they had previously placed in evidence affidavits to the effect that the company was solvent, we felt it our duty, as custodians of this corporation, to defend the action, which, in our estimation, was unwarranted, and we were further advised that this was proper procedure, by our attorneys.

THE COURT: Did any of the stockholders speak to you about it, or the attorneys for the stockholders?

A. In the very beginning, this bankruptcy action

was brought to our attention by a stockholder, Mr. McFee.

Q. Did you have any notice of the bankruptcy proceeding being instituted?

A. We did not.

Q. Did you, in your opinion as receiver, believe the bankruptcy action was other than unwarranted?

A. I would describe it as a fraud on the part of certain directors who put through the action, as was afterwards disclosed by hearing on the bankruptcy.

THE COURT: What became of the bankruptcy proceeding in Delaware?

A. It was dismissed.

Q. Who was responsible for having it dismissed? The receivers?

A. Yes, through their counsel.

Q. Who instigated and prosecuted these bankruptcy proceedings?

A. Mr. Crossman, the president.

Q. I would like to offer in evidence all of the vouchers of the receivers that have not been heretofore offered. I want to get all of the vouchers of the receivers.

THE COURT: Have they raised objections to all of them?

MR. McCARTER: I haven't to all of them, except so far as there is the general legal objection. I want to be heard before that is admitted.

THE COURT: Have you a copy of the order of reference? I want to see the scope of it.

MR. McCARTER: I have no objection to Mr. Smith putting in anything that he thinks supports the account.

MR. SMITH: I would like to know if Mr. McCarter wants all the vouchers referred to and which I offer in evidence submitting to the Court in form of this account.

MR. McCARTER: In answer to Mr. Smith's offer, I would say I have absolutely no objection to Mr. Smith putting in evidence any voucher which he contends supports the account, but I do not think there should be a blanket offer, so that neither the Master nor other persons interested, can tell what is in evidence and what is not.

MR. SMITH: I offer in evidence all vouchers of the receivers from the date of their appointment, upon which their account is based.

MR. McCARTER: Then, how can the Master tell what is admitted, and whether the bill of so and so of such and such a date is in evidence or not? I think the receivers should not throw any burden on the Master. They should then prepare an account in the form of an executor's account and submit that in support thereof.

MR. SMITH: I offer in evidence the daily cash sales slips since the appointment of the receivers.

MR. McCARTER: That is objectionable in the same way.

Q. Have you any records to show what your daily cash sales were?

A. Yes.

Q. What are they?

A. They are daily cash statements by the office manager who received the money.

THE COURT: Are they entered in a book?

A. Yes, but I recall I wanted to correct the statement I made in the beginning of these hearings that I had nothing to show other than the entry in the cash book. I now recall I have my daily cash vouchers for it.

By MR. McCARTER:

Q. This Delaware bankruptcy proceedings was a petition filed against the corporation by certain creditors?

A. Yes.

Q. Alleging that the corporation was insolvent and had committed certain acts of bankruptcy?

A. Yes.

Q. And the receivers felt that should be opposed, because, in their opinion the corporation was not really insolvent?

A. Yes.

Q. The receivers did actively and successfully oppose the petition in bankruptcy on that ground?

A. Yes.

Q. You felt that in so opposing the adjudication in bankruptcy, you conferred some substantial benefit on the corporation?

A. Yes.

Q. Why is it, therefore, that you are not now opposing the suit in the Court of Chancery of New Jersey for the appointment of a receiver of this corporation on the ground that it is solvent?

MR. SMITH: I object. I don't think that material.

A. I would have to have my attorneys answer that.

Q. Do you know anything about a certain suit in chancery of New Jersey for the appointment of a receiver of this corporation?

A. Yes, I know it is there.

Q. And the receivers are not opposing that suit?

A. No.

THE COURT: Was your account filed prior to the institution of this suit?

A. No.

THE COURT: Was this accounting begun prior to the institution of this chancery suit?

A. No.

THE COURT: Had this proceeding been dismissed in the United States District Court? I

mean at the time the Chancery proceedings were begun.

A. The mandate had come down from the Court of Appeals ordering the receivers dismissed.

THE COURT: Was that why you didn't oppose the Court of Chancery?

A. No. I had no reason for opposing this action.

MR. McCARTER: You have actively co-operated with the complainant in that Chancery action?

A. Yes.

MR. SMITH: I object to this line of questions as immaterial to the issue.

MR. McCARTER: It is very important to this issue. I am cross-examining him on that by showing his inconsistent position.

MR. SMITH: The Circuit Court of Appeals handed down a mandate dismissing this bill before the Chancery action was started.

THE COURT: That would be one good reason for him not to do any more opposing.

MR. McCARTER: It should have been a good reason for him not doing a great many things he has done.

By MR. McCARTER:

Q. Why, Mr. Kirby, when you opposed the bankruptcy adjudication, have you not only not opposed, but actively co-operated in the Chancery suit, which states insolvency and dismissal of the receivers?

MR. SMITH: I object to that. I don't see what can be material to this issue by going into that.

THE COURT: I don't know. It is cross-examination on a statement.

MR. SMITH: He should be cross-examined why he opposed the bankruptcy action.

THE COURT: This is solely as to his justification of expenses. I think you have gone a little

beyond that, when you ask that. That is not involved in this particular accounting.

MR. McCARTER: I am showing whether or not any disbursements were incurred in the chancery suit.

MR. SMITH: What this individual thinks or did think, as a receiver, is something that certainly is not material under this reference.

MR. McCARTER: He has just admitted he has actively co-operated in that chancery suit.

THE COURT: I do not feel that is connected with this accounting.

MR. McCARTER: It is cross-examination on his statement, on his item of the alleged benefit to the corporation by opposing the bankruptcy. Why is it opposed one time and actively co-operated with shortly thereafter?

THE COURT: I will allow the question.

MR. SMITH: That is going to open something that will take a long while to clear up.

THE COURT: We cannot open trial in a chancery matter. I never knew there was a chancery matter pending. I will sustain the objection, I didn't know there was any chancery action pending.

MR. McCARTER: I am not going to examine as to the chancery action, but my question which directs his attention to the inconsistency of position is certainly cross-examination as to the alleged benefit conferred upon the corporation by opposing the bankruptcy.

THE COURT: I think you can take that up on your argument on the final exceptions.

MR. McCARTER: Then maybe I am better off.

THE COURT: That is a matter when it comes up, whether or not they should have allowed the expenditure. It would be up to him to justify it.



By MR. McCARTER:

Q. Referring now to the balance sheet Mr. Deno made in the early days, in which he eliminated what you call false entries, who pointed out to Mr. Deno what were false?

A. In the first place, he pointed them out to me, and I pointed out the ones that should be eliminated.

Q. When he called your attention to the various entries, you directed him which should be eliminated in making up his balance sheet?

A. Yes.

Q. The item which you have testified to totalling \$183,361.50, P-24 discount on stock, charged to organization expenses, P-84, in what item on the balance sheet of May 11, 1922, actual figures as shown by the books of the company, is that included?

A. I am not sure whether it is. I would think it is in deferred assets.

Q. Under what item in the balance sheet of May 11, 1922, as appearing on the books of the company, is entry \$57,052.17, P-88, commissions on stock sales-charged to organization expenses P-84, included?

A. I would say that appears under heading of deferred assets.

Q. The same is true, also, of the item \$60,006.77, P-105, general construction charged to organization expenses, P-84?

A. No, that was afterwards; \$45,005.08 of this account was charged against machinery and \$15,001.69 charged against building.

Q. You testified, referring to the last item, that \$10,000 of it was made up of presumably personal expenses of Mr. Crossman and Mr. Rodemann. Presumably incurred in floating the organization. You used the word "presumably"; what is your basis for that presumption?

A. In the minute book of the company, it says

"Due Mr. Rodemann 35,000 shares common stock for services rendered" and that is the only explanation for it, and also 10,000 to Mr. Crossman for services rendered, and I could not give it any other. I couldn't analyze it any other way.

Q. The minute book also discloses payment of that stock, or delivery of that stock, was voted to Mr. Crossman and Mr. Rodemann by the board of directors?

A. Yes.

Q. You wish us to understand that in your opinion, it is improper to capitalize, in any way, as a deferred asset, the discount allowed on the sale of the corporation stock?

A. Yes.

Q. Or a commission paid on the sale of the corporation stock?

A. Yes.

By MR. SMITH:

Q. I direct your attention to the amount of stock in the sum of \$10,000 and \$35,000 turned over to Mr. Crossman and Mr. Rodemann. Will you tell us more about that?

A. Whereas this stock, according to the minute book, was properly and duly voted by the board of directors, I criticize this entry in the books and not the giving of the stock, because there is certainly nothing in the minute book authorizing the treasurer or accountant for this company to charge this amount \$45,000 of it to machinery and \$15,000 to buildings.

By MR. McCARTER:

Q. Have you here books of the Burnrite Coal Briquette Company which will show where those charges to machinery and buildings were made?

A. Yes.

Q. Will you produce them?

A. Here is the general ledger, page 146.

MR. SMITH: I offer these two books in evidence.

(Received in evidence and marked "Exhibit 2" and "Exhibit 3.")

THE COURT: Do the books show that?

A. Yes.

THE COURT: In whose handwriting?

A. I have been informed part of it is in Mr. Rodemann's handwriting and part in Mr. Smith's.

MR. McCARTER: I move to strike out the answer.

By MR. McCARTER:

Q. You instructed Mr. Deno to eliminate as false entries, all capitalization of organization expenses?

A. Yes.

Q. That was done for the purpose of arriving at your statement of the assets and liabilities of the company on your account?

A. Yes. It was done for the sole purpose of giving a proper basis for the entry amounts.

Q. You have characterized as false entries, all capitalization of organization expenses?

A. Not all of it.

By MR. SMITH:

Q. As one of the receivers of this company, did you find in the files, any income tax return for the year 1920, and if so, will you produce it?

THE COURT: Has this any bearing on the account?

A. I have a copy of it.

MR. SMITH: I ask you to have it marked for identification.

(Received in evidence and marked "Exhibit No. 4 for Identification.")

Q. That is a copy of the income tax for the corporation of the year 1920?

A. Yes.

HENRY C. RODEMANN, SWORN.

DIRECT EXAMINATION.

By MR. SMITH:

Q. Where do you live, Mr. Rodemann?

A. No. 778 South Tenth Street.

Q. What is your present business?

A. Coal dealer, retail.

Q. Are you connected with the Burnrite Coal Briquette Company?

A. I was, as treasurer.

Q. When did you become treasurer?

A. I think June—no, December or January, either December, 1918, or January, 1919.

Q. Did you continue to act until the present time?

A. I did.

Q. I show you income tax return of the Burnrite Coal Briquette Company for the year 1920, which has been marked for identification P-4 of this date, and ask if same is in your handwriting or not?

A. It is.

Q. I direct your attention to a signature. Did you execute that return?

A. I copied it from the one that was sent.

Q. Did you execute the original?

A. I don't know whether it was typewritten or not.

Q. Did you sign it?

A. I did.

Q. Who else signed it?

A. No one else.

Q. You signed it as treasurer?

A. I believe so.

Q. The original was an exact copy of this?

A. I feel this is an exact copy of the original.

MR. SMITH: I offer this tax return in evidence.

MR. McCARTER: I object as being absolutely immaterial.

THE COURT: Why is it material?

MR. SMITH: As I recall this accounting, Mr. Kirby has testified and the books of the corporation have been offered in evidence showing that during 1920 certain moneys were expended for their product, and certain moneys were received on the sale of their product. In fact, they had larger production and sale of their product in 1920 than this plant has ever had, and in the accountants' report and balance sheet of this corporation, they have set up in that balance sheet amounts which they have capitalized, which are shown on the books to have been disbursements, and they now contend the balance sheet of that corporation is a proper balance sheet and that the receivers' account should not be based upon the balance sheet the receivers prepared as of that date, but upon the corporation balance sheet, and the receivers offer this on this account, to show that the corporation filed an income tax for 1920 in which they say they have not regularly carried on business during the year, that the plant was in the course of construction, and that it was completed and operations commenced January 10, 1921, and they make no return and claim there is no tax of any kind.

THE COURT: We are not going to try them on this income tax return.

MR. SMITH: I don't question that it is a false return, but I think it is evident, in the account of the receivers for whatever weight it has.

MR. McCARTER: I don't think it has any weight. I don't think it has anything to do with the accounting of these receivers. I don't think the balance sheets have much to do with it.

THE COURT: I am simply to take their account as to what they found and follow the account in connection with it.

MR. SMITH: I ask an exception.

THE COURT: This is not a 21-A examination, you know.

Q. Did you have custody of the mortgage bonds of this corporation?

A. I did.

Q. Do you know what amount of the mortgage bonds authorized by this corporation was?

MR. McCARTER: I object as immaterial; as absolutely immaterial.

MR. SMITH: The purpose of this examination is, briefly, the receivers are charged with an account and they have to account for all of the assets that may have come into their possession and which they may be charged with. As to the mortgage bonds they are charged with, it is certainly up to us to show what we set up in our account is proper.

THE COURT: You don't have to prove that.

MR. SMITH: I see no objection to proving our account.

MR. McCARTER: I object.

MR. SMITH: I ask an exception.

Q. Do you know what amount of the mortgage bonds of this corporation were given to the president of the corporation, Mr. F. M. Crossman?

MR. McCARTER: I object for the same reason as before—absolutely immaterial.

THE COURT: Objection sustained.

Q. Do you know why certain mortgage bonds were given to the president?

MR. McCARTER: I object for the reason mentioned before.

THE COURT: Objection sustained.

Q. Do you know what amount of these mortgage bonds were turned over to the Burnrite Coal Service Company?

MR. McCARTER: I object, same reason as before.

THE COURT: Objection sustained.

Q. Do you know why certain mortgages were turned over to the Burnrite Coal Service Co.?

MR. McCARTER: I object as immaterial also.

THE COURT: Objection sustained.

Q. Do you know what mortgage bonds, if any, were turned over to the Burnrite Coal Service Co. after the appointment of the receivers?

MR. McCARTER: I object, same as before.

THE COURT: Objection sustained.

MR. SMITH: That is material. We set up certain mortgage bonds in our account. I ask for an exception.

Q. Do you know what mortgage bonds, if any, were turned over by the Burnrite Coal Service Co. to F. M. Crossman?

MR. McCARTER: I object.

THE COURT: Objection sustained.

Q. Do you know why any mortgage bonds were turned over by the Burnrite Coal Service Co. to Mr. Crossman?

MR. McCARTER: I object, same as before.

THE COURT: Sustained.

Q. Do you recall, after the appointment of the receivers, that you requested permission to make certain entries in the books of the corporation?

MR. McCARTER: I object, same as before.

THE COURT: Objection sustained.

MR. SMITH: I think that is very material. That is a question of entries made by the treasurer of this corporation after the receivers were appointed.

THE COURT: What is the object of the question? In what way is it relevant in having this

account allowed, on the part of Mr. Kirby and Mr. Duffy?

MR. SMITH: There has been a question raised all along as to this account, the different items, and I want to show that now.

THE COURT: Confine it to some item in the account.

MR. McCARTER: This question is directed to the books of the corporation, not to the books of the receivers.

Q. I show you journal statement No. 92, dated March 22, 1922, and ask if that is in your handwriting.

MR. McCARTER: I object, it is immaterial. March 22, 1922, is before the appointment of the receivers. That certainly is not material. That can't be relevant.

THE COURT: Objection sustained.

Q. I show you journal statement No. 92, and ask you in whose handwriting it is, and when it was written.

MR. McCARTER: I object, the same reason.

THE COURT: How does that go to affect the account of the receivers; that is what we are interested in? This is not a trial of the officers of this corporation. All on this order of reference I can take, is reference to the account of receivers in seeing that they are proper and recommending they be passed as submitted.

MR. SMITH: It is very strange that an officer objects to answering questions.

THE COURT: He might think they are impertinent.

Q. After the receivers were appointed, did you make certain entries in the books of this corporation?

MR. McCARTER: I object.



THE COURT: You must show that it in some way affects his account.

MR. SMITH: I don't see why he cannot answer that question.

MR. McCARTER: Direct the witness's attention to a particular item, then. I am willing to have him show.

Q. After the appointment of the receivers, did you not write this journal voucher No. 92, which relates to certain mortgage bonds that were given Mr. Crossman?

MR. McCARTER: I object. It is absolutely immaterial and irrelevant.

THE COURT: Objection sustained.

Q. Did you make any entries in the book after the appointment of the receiver?

MR. McCARTER: I object.

THE COURT: Objection sustained.

Q. Did you, after the appointment of the receivers, make certain entries relating to mortgage bonds which were given to Mr. Crossman?

MR. McCARTER: I object for the same reason.

THE COURT: Objection sustained.

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ALFRED L. KIRBY, recalled.

DIRECT EXAMINATION.

By MR. SMITH:

Q. As receiver of this corporation, did you come into possession of this book which I show you?

A. Yes.

Q. What is that book?

A. It is a loose leaf binder containing journal vouchers known as the "Journal voucher book."

Q. Does it contain journal voucher No. 92?

A. Yes.

Q. I offer this book in evidence.

MR. McCARTER: I object, it is immaterial.

THE COURT: What does that do to prove your account in any way?

Q. Does that relate to your account as to the mortgage bonds in your possession?

A. Yes.

THE COURT: Does it show anything you were or were not charged with that is incorrect on your account?

A. As I remember the bill of exceptions, there wasn't an item of our account that wasn't excepted to.

MR. McCARTER: Doesn't that voucher then really show that an entry on the charging side of your account is proper: that you received, or are accountable for no more of the bonds than you have charged yourself with in your account?

MR. SMITH: I object to counsel cross-examining this witness.

THE COURT: I will sustain the objection; exception allowed.

MR. SMITH: To the offer of the book?

THE COURT: Yes.

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STATE OF NEW JERSEY, {  
COUNTY OF ESSEX,        } ss.:

MARION C. BROOKER, being duly sworn, according to law, on her oath, deposes and says that she will well and truly take stenographically and reproduce in typewriting the testimony taken in the above entitled matter.

Sworn to and subscribed }  
before me, this            }  
day of                    , 1924. }

I, CHARLES M. MASON, referee in bankruptcy, do hereby certify that the accompanying testimony was taken by the above stenographer selected by me and I believe it accurately sets forth the evidence given.

*Referee in Bankruptcy.*

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REPORT OF SPECIAL MASTER.

(Filed July 16, 1924.)

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In pursuance of an order of this Court made in the above-entitled cause bearing date the twenty-first day of February, 1924, whereby it was referred to me, the subscriber, to take and state the account of Alfred L. Kirby and John P. Duffy, as receivers of the defendant above named.

I do respectfully report that I have been attended by Joseph L. Smith, Esquire, of counsel for Messrs. Kirby and Duffy, and by George W. C. McCarter, Esquire, of counsel for the above-named defendant, on the eighteenth, nineteenth, twenty-second and twenty-fifth day of March, 1924, the fifth and the eleventh day of April, 1924, at the office of the defendant corporation, No. 543 New Jersey Railroad Avenue, Newark, New Jersey. And have taken the depositions of Alfred L. Kirby, receiver and Louise Dreier, bookkeeper for the receivers, and H. C. Rodemann, treasurer of the defendant corporation, the witnesses produced before me, and have examined into the matters referred to me.

Transcript of testimony taken in this matter is attached and made part hereof, and referred to throughout this report.

Mr. McCarter, at each hearing, was attended by Edward C. Smith, certified public accountant, and by

H. C. Rodemann, treasurer of the defendant corporation. Free access to all of the books of account and records as kept by the receivers was allowed Messrs. Smith and Rodemann (Record, March 18th, pp. 19 to 22) to expedite matters and show the method in which the books were kept, and to assist them in the preparation of questions put to the witnesses.

Referring to "Exceptions to Report and Account of Receivers" taken by the defendant, I am taking these up and reporting on same in the order in which they were set down:

EXCEPTION 1. The report and account are not sufficiently specific, nor properly itemized.

I respectfully report on the above exception that inasmuch as the receivers had been operating the business for nearly two years, it would have been quite impossible for them to have submitted a more specific report with each account itemized without preparing a complete transcript of their books and records, or submitting the books and records themselves.

EXCEPTION 2. Vouchers in support of the disbursements for which credit is claimed are not produced.

I respectfully report on the above exception that there were more than one thousand vouchers in the form of cancelled checks, and that the receivers could not properly submit all of these with their report. I found all of these vouchers were properly numbered, filed in numerical order, and corresponded with the items of disbursement set forth in the cash book as each disbursement was made. All of these vouchers were submitted in evidence at the hearing March 18th (Record, p. 8).

EXCEPTION 3. That part of the account headed "Analysis of cash receipts for the period May 11,

1922 to Jan. 31, 1924," is insufficient for the following reasons, etc., etc.

I respectfully report on the above exception that at the hearing of March 18th (Record, pp. 5 and 6), all of the books of account kept by the receivers were received and marked in evidence, that said books were kept in orderly manner and set forth in detail each item of cash receipt, the date of receipt, and the reason therefore and the source of the same.

EXCEPTION 4. That part of the account entitled "Analysis of cash disbursements for the period May 11, 1922 to January 31, 1924, by expenses classification" is insufficient for the following reasons, etc., etc.

I respectfully report on the above exception that in this case as well as in that of the cash receipts referred to heretofore, it would have been impracticable for the receivers to attach to their report bills or invoices in support of each disbursement, as said bills ran into the thousands. The books of account received in evidence (March 18th, Record, p. 5) especially the purchase ledger, Exhibit P-3, sets forth in detail each purchase, the basis for each disbursement, giving the date of purchase, the name of individual or concern from whom the goods were purchased, the amount of purchase, and in addition a serial number corresponding with the number on the actual invoice or bill. I find the receivers have a bill or invoice to support each disbursement as recorded in the cash book, said bills being numbered as received and filed numerically in orderly manner. All of these invoices were offered in evidence showing the reason for the disbursements, and the actual vouchers or cancelled checks in support of the disbursements were in evidence as stated heretofore.

During the hearing of March 19th the receivers were requested to prepare itemized statements with original invoices and vouchers attached in support of items of cash disbursements set up in their report, namely, auditing and investigating, \$2511.86; repair parts, additions and improvements, \$32,224.92; installation labor, \$21,411.06; legal and professional expenses, \$3480.07; bank notes, \$25,790. These statements with the invoices attached were received in evidence March 22d (Record, beginning page 2), and marked Exhibit P-20, P-26, P-18, P-22, and P-23 respectively. I find these itemized statements correct in each case, and the total amount of invoices received corresponding with the figures in the receivers' report.

At the hearing March 25th (Record, p. 2) there was received in evidence and marked Exhibit P-24 an itemized statement of the expenditures of \$21,000 borrowed by the receivers on certificates. I find this statement complete, proper and in accordance with similar item of receivers' report and account.

At the hearing April 5th (Record, p. 9) the receivers were requested to draw up a statement showing in detail where the receivers had expended moneys for the benefit of the corporation, and at the hearing April 11th (Record, p. 2) there was received in evidence statement and marked Exhibit 1, April 11, 1924, showing that the receivers had expended moneys and in other ways their conduct of the business had resulted in benefit to the defendant corporation amounting to \$49,008.41. I find this statement corresponds, as far as amount set opposite each item, with similar items in the receivers' report and account.

I further report that, the receivers were examined at length as to their conduct of the business, their knowledge of the operation of the plant and in particular as to their knowledge of the repairs and improvements to the plant; and I find and report that the busi-

ness was conducted under the personal supervision of the receivers, who were, at the hearing March 11th (Record, pp. 5, 6 and 7), able to state the position and duties of practically every employee whose name appeared in the payroll book, and at the hearing March 22d (Record, pp. 8 to 11), gave a detailed statement from memory of all the repairs made in the plant during their administration.

The order of reference specifically orders me to state the account of the said receivers, but having found the receivers' accounts correct in every detail and in strict conformity with their report and account, I could do no more than embody a copy of their account in this report, which would be only duplication. However, agreeable to the request of Mr. George W. C. McCarter of counsel for the defendant, contained in a communication received from him and dated May 17, 1924, I have prepared itemized statements with original invoices and vouchers attached, entitled: 1. Analysis of Receivers' Certificates, showing actual amount so borrowed and renewals; 2. Analysis of Auditing and Investigating, itemized to set forth each separate invoice and voucher; 3. Analysis of Bond and Insurance itemized to set forth each invoice and voucher separately; and 4. Analysis of legal and professional expenses itemized to set forth each invoice and voucher separately; and said statements are attached and made a part hereof.

I therefore find and report:

1. That the report and account made by Alfred L. Kirby and John P. Duffy as receivers of the defendant corporation pursuant to an order by this Court made on the twenty-fourth day of January, 1924, is true and correct and in strict conformity with their books of account, invoices, vouchers and other records here in evidence.

2. That the books of account as kept by the receivers are most complete, and their entire accounting system unique, in that, the receivers on order were able to immediately produce invoice and voucher to support any cash disbursement or receipt as selected at random by counsel.

3. That the disbursements made by the receivers, particularly for improvements and repairs, were made so that the plant might be continued in operation, and were made under the supervision and advice of the Mashek Engineering Company, the designers and builders of the plant.

4. The operation and conduct of this business under their receivership has resulted in benefit and profit to the stockholders and creditors to the amount of at least \$49,008.41, as shown by Exhibit 1 of April 11, 1924, a copy of which is attached hereto.

All of which is respectfully submitted this first day of July, 1924.

CHARLES M. MASON,  
*Special Master.*



EXHIBIT NO. 1.

BURNRITE COAL BRIQUETTE COMPANY—April 11, 1924.

		Reference
Increase in Assets	12,525.80	Balance Sheet
Auditing & Investigation	2,511.86	Cash Disbursements
Bond & Insurance	5,206.90	" "
Old Accounts Paid Off	7,920.15	" "
Interest Account	922.99	" "
Legal & Professional Expenses	3,480.07	" "
Interest on Bonds	280.00	" "
Demurrage caused by Bankruptcy Action	1,987.00	" "
State of Delaware Tax	200.00	" "
Custodians and employees May to July, Term of Restraining order	2,458.09	" "
<i>Accounts Payable</i>		
Insurance	2,566.84	
Legal & Professional Expenses	157.49	
Taxes for 1923	3,041.84	
Interest account	127.13	
Advertising Account	630.14	
Delaware Attorneys	4,000.00	
<i>Bills Payable</i>		
Advertising	5,876.73	
Amount of Royalties that would have been credited to Crossman's Account	4,968.45	
		58,861.39
<i>Credits to the Corporation</i>		
Cash Balance	545.09	
Old Accounts Collected	2,388.02	
Inventories, as estimated by the Corpora- tion	6,919.87	
		9,852.98
		49,008.41

*Report of Special Master*

## ANALYSIS OF RECEIVER'S CERTIFICATES, SHOWING ACTUAL AMOUNT SO BORROWED AND RENEWALS.

Amount \$48,750.00

1. September 25, 1922	Original	\$10,000.00
2. May 3, 1923	"	15,000.00
3. July 18, 1923	"	9,500.00
4. September 4, 1923	Renewal of item #2	14,250.00
		<hr/> \$48,750.00

## EXPLANATION.

A. In receiver's report under heading "Analysis of Cash Receipts"—item "Entries Renewal of Certificates by Bank" the amount opposite \$48,150. is a typographical error and should have been \$48,750.00 as above. This error, however, does not alter the total cash receipts of \$400,249.33.

B. Item 1 above, amount \$10,000.00 was paid back to Bank, \$5,000.00 November 25, 1922 and \$5,000.00 December 18, 1922. Therefore, there were no certificates outstanding between December 18, 1922 and May 3, 1923.

C. Item 2 above, amount \$15,000.00 represents sale of certificate at par.

D. Item 3 above, amount \$9,500.00 represents the sale of \$10,000.00 certificate at .95.

E. Item 4 above, amount \$14,250.00 represents renewal of item #2 and sold at .95.

F. Receivers now owe on Receiver's Certificates \$25,000.00 and at no time did they borrow or owe on certificates more than \$25,000.00.

ANALYSIS OF AUDITING AND INVESTIGATING ITEMIZED, TO  
SET FORTH EACH SEPARATE INVOICE AND VOUCHER.

Amount \$2,511.86

<i>Name</i>	<i>Invoice</i>		<i>Voucher</i>
1. Puder & Puder	\$50.00	#16	Amount \$250.00
	1003.22	#11	Amount 250.00
		#74	Amount 250.00
		#222	Amount 303.22
	<hr/>		<hr/>
	\$1053.22		\$1053.22
2. J. W. Gurley	168.00	#544	Amount 168.00
	247.00	#724	Amount 247.00
	<hr/>		<hr/>
	\$415.00		\$415.00
3. Sherman Service	410.54	#315	Amount 410.54
4. Wm. S. Mahoffrey	250.00	#196	Amount 250.00
5. Edward C. Smith	134.10	#204	Amount 134.10
6. Wm. E. Davenport	73.00)		
	51.00)		
	<hr/>		
	124.00	#194	Amount 124.00
7. Mashek Eng. Com- pany	125.00	#10	Amount 125.00
	<hr/>		<hr/>
Total	\$2511.86		\$2511.86

EXHIBIT NO. P-20-A.

No. 6576

**PUDER & PUDER**  
**Certified Public Accountants**  
**Essex Building, 31 Clinton St.**  
**Newark, N. J.**

Jos L Smith & A L Kirby, Receivers,  
Burnrite Coal Briquette Co  
543 N J R R Ave  
City

August 3rd 1922

Balance due	\$753.22
-------------	----------

For services rendered in the matter of by Our  
Mr. Deno:           2 days                               50.00

Approved ..... 803.22  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. A-36.....

## EXHIBIT NO. P-20-D.

No. 6267

**PUDER & PUDER**  
**Certified Public Accountants**  
**Essex Building, 31 Clinton St.**  
**Newark, N. J.**

Joseph L. Smith and ) Receivers for Burnrite Coal  
W ) Briquette Co.  
A. L. Kirby and )  
J. P. Duffy ) June 21st 1922

For services rendered in the matter of investigation of books and records, in accordance with your in-

structions, as per complete report on the Balance Sheet and supporting schedules, as of May 11th, 1922 in accordance with our complete report dated May 20th, 1922; report on complete balance sheet as of May 11th with all supporting schedules thereon, as per our report of May 26th, 1922; report on special investigation of various items as shown in the balance sheet and investigation of Minutes and Stockholdings as per our report of June 3rd, 1922; report showing complete schedules of the Common Stock held by F. M. Crossman with transfers to others; also, Preferred Stock held by F. M. Crossman including transfers to others;

IN ALL FOR ABOVE:

Mr Deno	26	days	1	hour		
Mr. Harrington	2	"				
<hr/>						
	28	"	1	"	@ \$25.00	\$703.57
<hr/>						

Assistants:

Mr. Wm. Bernet	5	"	2½	"		
Mr. Eick			3½	"		
Mr. McGuire	3	"				
<hr/>						
	8	"	6	"	@ \$20.00	177.15
<hr/>						

Messrs. A. H. Puder

& G. O. Mortenson,

supervision & con-

ferences 3 " 3½ " @ \$35.00 122.50

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\$1,003.22

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. A-59.....

IN THE U. S. DISTRICT COURT.

District of New Jersey,  
in the matter of

Newark, N. J. Jan. 28 / 22 No. 16

Equity  
in ~~Bankruptcy~~

FIDELITY UNION TRUST COMPANY

Pay

to the

order of Puder and Puder

\$250 00/100

Two hundred and fifty and 00/100

Dollars

For On account

A. L. KIRBY & JOHN P. DUFFY,  
Receivers for Burnrite Coal Briquette Co.

Countersigned

.....  
*Referee.*

(Endorsed.)

Pay to the order of  
FIDELITY UNION TRUST Co.  
Newark, N. J.  
PUDEK & PUDEK

(In lead pencil.)

2
545.19
38.75
370.86
<hr/>
955.70
328.39
<hr/>
627.31

IN THE U. S. DISTRICT COURT.

District of New Jersey,  
in the matter of

Newark, N. J. Aug. 3, 1922 No. 11

Equity  
in ~~Bankruptcy~~

MERCHANT AND MANUFACTURERS NATIONAL BANK

Pay

to the

order of Puder & Puder

\$250 00/100

Two hundred fifty dollars

Dollars

For On Account

BURNRITE COAL BRIQUETTE CO.

Trustee

A. L. Kirby & John P. Duffy

Receivers

Countersigned

.....

*Referee.*

(Endorsed.)

Received Payment

Through the Newark Clearing House

Prior Indorsements Guaranteed

Aug. 5, 1922

Fidelity Union Trust Co. No. 7

Pay to the order of  
Fidelity Union Trust Co.  
Newark, N. J.  
PUDEK & PUDEK

No. 74

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of  
In Equity

Newark, N. J. Sept. 14, 1922

Pay to the  
Order of Puder & Puder  
Two hundred fifty Dollars

\$250.00  
Dollars

BURNRITE COAL BRIQUETTE CO.

A. L. Kirby and John P. Duffy  
Receivers

To the

MERCHANTS AND  
MANUFACTURERS

NATIONAL BANK

55-7 Newark, N. J.

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

On %	
Invoice	
June 2nd	250.00
Less Discount	
Net Amount of Check	

Checked

and

Approved by



(Endorsed)

Pay any Bank, Banker or Trust Co.  
or order

Federal Reserve Bank

Sep 18-1922

1-120 of New York 1-120

Prior Endorsements Guaranteed

Pay to the order of  
Capitol National Bank  
PUDER & PUDER

Pay to the order of  
Capitol National Bank  
PUDER & PUDER

Pay to the order of  
Federal Reserve Bank  
of New York, N. Y.  
Prior Endorsements Guaranteed  
Sep 15 1922  
Capitol National Bank  
New York, N. Y.  
W. L. Clow, Cashier

No. 222

IN THE U. S. DISTRICT COURT,  
District of New Jersey  
in the matter of

Newark, N. J. Oct. 30, 1922

In Equity

Pay to the

order of Pader &amp; Pader

\$303 22/100

Three hundred three dollars twenty-two cents Dollars

BURNITE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55 - 7 Newark, N. J.

This Check is Issued in Full Payment of Items  
Herein, Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Balance of

acct

303.22

Less Discount

Net Amount of Check

Checked

and

Approved by

(Endorsed.)

Received Payment  
Through the Newark Clearing House  
Prior Indorsements Guaranteed  
Nov 1 1922  
Fidelity Union Trust Co. No. 8

Pay to the order of  
Fidelity Union Trust Co.  
Newark, N. J.  
PUDEB & PUDEB

---

EXHIBIT NO. P-20-C.

Irvington, N. J. Jan. 26th, 1922 192—  
M A. L. Kirby & J. P. Duffy Receivers for  
Burnrite Coal Briquett Co.  
Newark N. J.

To John W. Gurley Dr.  
62 40th St. Irvington, N. J.

Terms. \_\_\_\_\_  
Billheads. No. 20.

---

To making audit of old books from  
Jan 1st to May 11th 1922, arrang-  
ing invoices and petty cash vouch-  
ers in numerical order and check-  
ing each with the book entry.  
Checking trial balances of accounts  
receivable, payable and bills pay-  
able. Making closing entries and  
closing Gen'l Ledger as of May 11  
1922. Preparing balance sheets  
for booklet entitled Receivers Re-  
port as of Dec 31, 1922.  
Also making closing entries and

closing accounts receivable, payable  
and General ledger as of Dec 31, 1922

Dec. 15, 18, 19, 20, 21, 22, 26,

27, 28 and 29th 5 days at \$12 60.

Jan. 2, 3, 4, 5, 8, 10, 11, 12, 15

16, 17, 19, 22, 23, 23, 24, 24, and

25th 9 days at \$12. 108. \$168.

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 533 .....

### EXHIBIT P-20-B.

Irvington, N. J. March 12th 1923

John P. Duffy & A. L. Kirby Receivers

Burnrite Coal Briquette Co.,

543 N. J. R. R. Ave.,

Newark N. J.

To

John W. Gurley

62 40th St.

Irvington N. J.

Dr.

To preparing monthly statements, one as of Feb. 1st,  
one as of March 1st and one combined statement show-  
ing losses from Jan 1st to May 11th, plus losses from  
May 11th to Dec. 31st 1922.

4 days at \$12. per day \$48.00.

To going over minute book with Mr. A. L. K. and check-  
ing certain items listed therein, taking papers to Mr.  
Smith's office, going to Auto Bureau for license appli-

cation, taking affidavits for license application, going to home of Mr. A. B. Disc and taking his affidavit for transfer of bill of sale on auto truck, checking returned stockholders cards and correcting mailing list and names and addresses in stock ledger

7 days at \$7. per day	49.00.
To preparing Income Tax Return for year of 1922	150.00.
	<hr/>
	\$247.00.

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 668.....

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Invoice	
Jan 26th	168.00

Less Discount	
---------------	--

Net Amount of Check	
---------------------	--

Checked and Approved by	
-------------------------------	--

No. 544

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

Newark, N. J. Feb. 3 1923

In Equity  
Pay to the  
order of J. W. Gurley  
One hundred sixty eight dollars

\$168 00/100

Dollars

BURNHTE COAL BRIQUETTE Co.  
A. L. Kirby and John P. Duffy

Receivers

To the  
MERCHANT AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

Report of Special Master

*Report of Special Master*

443

(Endorsed.)

J. W. Gurley

John W. Gurley

Received Payment

Through the Newark Clearing House

Prior Indorsements Guaranteed

Feb 6 1923

Natl Newark & Essex Banking Co. No. 6

Pay to the order of

Any Bank, Banker or Trust Co.

Prior Endorsements Guaranteed

Feb-6 1923

National Newark & Essex Banking Co.

Newark

55-1

N. J.

55-1

No. 724

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

Newark, N. J. Mar 29 1923

In Equity

Pay to the

order of J. W. Gurley

\$247 00/100

Dollars

Two hundred forty-seven dollars

BURSRITE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANT AND

MANUFACTURERS

NATIONAL BANK

55 - 7 Newark, N. J.

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Invoice

March 12

247.00

Less Discount

Net Amount of Check

Checked

and

Approved by



(Endorsed)

J. W. Gurley  
John W. Gurley

Merchants & Manufacturers National Bank  
Mar 31 1923  
1  
Newark, N. J.

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EXHIBIT P-20-D.

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November  
23rd,  
1922

A. L. Kirby & J. P. Duffy, Receivers,  
Burnrite Coal Briquette Company,  
Newark, New Jersey

To

Sherman Service, Dr.  
P. O. Box 853,  
City Hall Station,  
New York City.

To service rendered in the matter of Burnrite  
Coal Briquette Company, as per invoices on  
file in the office of A. L. Kirby..... \$410.54

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 367 .....

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice	
Nov 23	410.54
Less Discount	
Net Amount of Check	

Checked  
and  
Approved by

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

Newark, N. J. Dec. 5 1922

In Equity  
Pay to the  
order of Sherman Service

\$410 54/100

Four hundred ten dollars fifty-four cents

Dollars

BURNRITE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANT AND

MANUFACTURERS

NATIONAL BANK

55 - 7 Newark, N. J.

(Endorsed.)

Pay to the order of  
Hanover National Bank  
Sherman Service, Inc.

Pay any Bank, Banker or Trust Co.  
or order

Federal Reserve Bank

Dec-7 1922

1-120 of New York 1-120

Prior Endorsements Guaranteed

Pay to the order of  
Federal Reserve Bank of New York

Prior Endorsements Guaranteed

Dec 6 1922

Hanover National Bank

New York, N. Y.

WILLIAM E. CARLE, JR., Cashier

---

EXHIBIT NO. P-20-E.

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(On back of blank check of Fidelity Trust of Newark.)

Wm. S. Mahaffey 250

C K M 196 Oct 25

~~Wm E. Davenport~~ 124 Oct. 25

Retainer fee in Bankruptcy action in Delaware  
should be in Legal and professional Act.

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
In the Matter of  
In Equity                      Newark, N. J. Oct. 26 1922  
Pay to the  
Order of Wm G. Mahaffy                      \$250 00/100  
Two hundred and fifty and 00/100 Dollars  
BURNRITE COAL BRIQUETTE Co.  
A. L. Kirby and John P. Duffy  
Receivers  
To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7    NEWARK, N. J.

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Legal Services

Less Discount

Net Amount of Check

Checked

and

Approved By

(Endorsed):

WM. G. MAHAFFY

*Attorney*

Pay Any Bank, Banker or Trust Co.  
or Order

FEDERAL RESERVE BANK

Oct 28 1922

1-120 of New York 1-120

Prior Endorsements Guaranteed

Pay to the Order

Federal Reserve Bank of Philadelphia

Prior Endorsements Guaranteed

27 Oct 27 1922 62

Equitable Trust Company,

Wilmington

4 Pay to the Order of 3

Any Bank, Banker or Trust Co.

Prior Endorsements Guaranteed

Federal Reserve Bank of Philadelphia

Pay to the Order of

Any Bank, Banker or Trust Co.

All Prior Endorsements Guaranteed

3-4 Oct 28 1922 3-4

Federal Reserve Bank

of Philadelphia, Pa.

WM. A. DYER, Cashier

*Report of Special Master*

EXHIBIT NO. P-20-F.

EDWARD CLIFTON SMITH  
 Certified Public Accountant

## Offices

New York, 15 Park Row  
 Newark, N. J. 45 Clinton Street

## Telephones

New York, Barclay 5827  
 Newark, Market 3144

May 19, 1922

Messrs. Kirby & Duffy, Receivers,  
 Burnrite Coal Briquette Company,  
 543 New Jersey Railroad Ave.,  
 Newark, New Jersey.

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To services rendered completing the audit of Burnrite Coal Briquette Company for the year ended December 31, 1921, in- cluding time of self and Accountant Williams from May 11, 1922 to date....	\$ 133 50
Telephone Calls from New York to Newark	60
	<hr/> \$ 134 10

Approved .....

Received .....

Date Rec'd.....

Check No. ....

Invoice No. ~~A-9~~ 2.....

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice	
May 19/22	134 10
Less Discount	

Net Amount of Check

Checked  
and  
Approved By

R

No. 204

IN THE U. S. DISTRICT COURT,  
District of New Jersey,

In the Matter of

In Equity Newark N. J. Oct. 28 1922

Pay to the

Order of Edward C. Smith \$134 10/100  
One Hundred Thirty Four Dollars Ten Cents

Dollars  
BURNRITE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy  
Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55-7 NEWARK, N. J.

*Report of Special Master*

Certified  
 At the Request  
 of the Holder  
 For \$ 134 10.....  
 55-7 Oct 30 1922 55-7  
 Merchants & Manufac'rs Nat'l Bank  
 Newark, N. J.  
 R Marshall  
 .....  
 Bookkeeping Dept.

(Endorsed))

Credit to the account of  
 Edward C. Smith  
 Edward Clifton Smith

Pay to the Order of  
 Any Bank, Banker or Trust Co.  
 Prior Endorsements Guaranteed  
 Oct 31 1922  
 National Newark & Essex Banking Co. No. 1  
 Newark  
 55-1                      N. J.                      55-1

Received Payment  
 Through the Newark Clearing House  
 Prior Indorsements Guaranteed  
 Oct 31 1922  
 Natl. Newark & Essex Banking Co. No. 1.



EXHIBIT NO. P-20-G.

Telephones: { 9949 Market  
                  { 3470-J Orange

Newark, N. J., Oct. 24, 1922.

M A. L. Kirby, Esq., c/o Burnrite Coal Briquette Co.

To WILLIAM E. DAVENPORT Dr.  
Court Reporter  
Supreme Court Examiner—Notary  
Ordway Building

Steno. No. #2.

---

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RE: Riggs v. Brunrite Coal Briquette Co.	
To 2½ hrs. time of stenog. Oct. 21 @ 2.00	5 00
To 33 folios of Petition, etc. (6 copies) @ 1.00	33 00
RE: In the Matter of Brunrite Coal Briquette Co., a Bankrupt.	
To 35 folios of Petition, etc. (6 copies) @ 1.00	35 00
	<hr/>
Received payment,	73 00

Approved .....  
Received .....  
Date Rec'd. ....  
Check No. ....  
Invoice No. 287.....

## EXHIBIT NO. P-20-H.

Telephones: } 9949 Market  
 } 3470-J Orange

Newark, N. J., October 18, 1922.

M Mr. A. L. Kirby, c/o Burnrite Briquette Co.,  
 543 N. J. R. R. Av.

Edward S. Riggs, } To WILLIAM E. DAVENPORT Dr.  
 v. } Court Reporter  
 Burnrite Coal } Supreme Court Examiner—Notary  
 Briquette Co. } Ordway Building

Steno. No. #1.

July 3:	To 4 hrs. time of stenog-	
	rapher @ 2.00	8 00
	To 4 " " " operator	
	@ 1.00	4 00
	To 78 folios Memorandum for	
	Complainant (4 copies)	
	@ 50¢	39 00
		<hr/>
	Received payment,	51 00

(For Merritt Lane, Esq.)

Approved .....

Received .....

Date Rec'd. ....

Check No. ....

Invoice No. 286 .....

This Check is Issued in Full Payment of Items  
 Herewith. Endorsement Hereon, by Payee or  
 Agent is Acknowledgment and Receipt in Full  
 Thereof. No Other Receipt is Required. If Not  
 Correct, Return at Once With Explanation.

Invoices	
Oct 18	51 00
" 24th	73 00
Less Discount	
Net Amount of Check	124 00

Checked  
 and  
 Approved By

No. 194

IN THE U. S. DISTRICT COURT,  
 District of New Jersey,

In the Matter of

In Equity Newark, N. J. Oct. 25 1922

Pay to the

Order of Wm. E. Davenport \$124 00/100  
 One Hundred Twenty Four Dollars Dollars

BURNITE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55 - 7 NEWARK, N. J.

(Endorsed)

For Deposit

WM. E. DAVENPORT

Proof Number 4

Oct 26 1922

## EXHIBIT NO. P-20-1.

Our Order      Form B. Nov. 1919      Date Shipped  
Your Order

MASHEK ENGINEERING Co.

Manufacturers of

Briquetting, Mining, Concentrating, Smelting  
and Cement Mill Machinery

90 West Street

New York, N. Y.    May 29, 1922.    191

Sold to Burnrite Coal Briquette Co.,

A. L. Kirby & J. D. Duffy, Receivers,

Consigned to    N. J. R. R. Ave. & Alpine St.,  
Newark, N. J.

Shipped From.....

Via .....

Terms.....

NOTICE—Claims for errors must be made on receipt of goods. We take receipt "in good order" from Transportation Co., and goods are shipped at your risk, defective parts will be replaced, but no claims will be allowed for labor or damages.

To making an examination of the Burnrite  
Coal Briquette Co's. plant at N.J.R.R.  
Ave. & Alpine Street, preparing bill of  
new parts required and report on condition of plant dated May 20th, 1922

\$125.00

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 3 ~~A-27~~....

IN THE U. S. DISTRICT COURT.

District of New Jersey

In the matter of

Newark, N. J. Aug. 3, 1922 No. 10

Equity  
in ~~Bankruptcy~~

MERCHANTS AND MANUFACTURERS NATIONAL BANK

Pay

to the

Order of Mashek Engineering Company

\$125 00/100

One Hundred Twenty Five Dollars

Dollars

For Invoice May 29, 1922.

BURNRITE COAL BRIQUETTE CO.

Trustee

A. L. Kirby & John P. Duffy

Receivers

Countersigned

.....  
*Referee.*

(Endorsed)

Pay IRVING NATIONAL BANK

Or Order

Mashek Engineering Co.

Pay to

1-67 Any Bank, Banker or 1-67

Trust Company or Order

Aug — 4 1922

Prior Endorsements Guaranteed

Irving National Bank, Newark

C. V. Allnutt, Cashier

Pay to Any Bank, Banker or Trust Co.

Or Order

Federal Reserve Bank

Aug — 5 1922

1-20 of Newark 1-120

Prior Endorsements Guaranteed

ANALYSIS OF "BOND AND INSURANCE" ITEMIZED TO SET  
FORTH EACH INVOICE AND VOUCHER SEPARATELY.

Amount \$5206.90

<i>Name</i>	<i>Invoice</i>	<i>Voucher</i>
1. T. F. Bryce	156.00 )	#19—\$392.64
	138.04 )	
	98.60 )	
	<hr/>	
	392.64	
2. John A. Eckert	256.36	#5— 256.36
3. T. F. Bryce	196.00 )	
	59.16 )	#6— 59.16
	12.50 )	
	98.60 )	#7— 307.10
	<hr/>	
	366.26	366.26
4. T. C. Moffatt & Co.	690.20 )	
	98.60 )	
	<hr/>	
	788.80	#8— 788.80
5. National Surety Co.	125.00	#9— 125.00
6. T. F. Bryce	49.30 )	
	197.20 )	
	<hr/>	
	246.50	#15— 246.50
7. T. F. Bryce	675.95 )	
	12.50 )	
	<hr/>	
	688.45	#195— 688.45
8. G. F. Sommer & Son	63.56	#345— 63.56
9. Smyth, Sanford & Gerard	905.46	#384— 905.46
10. Chas. F. Kraemer	98.60	#268— 98.60

*Report of Special Master*

459

11. Chas. F. Kraemer	98.60	#509—	98.60
12. Thos. F. Bryce	9.35 )		
	111.55 )	#704—	120.90
	<hr/>		
	120.90		
13. Thos. F. Bryce	394.40 )		
	119.00 )		
	98.60 )		
	335.24 )		
	197.20 )	#872—	1000.00 on
			account
14. J. A. Eckert & Co.	256.36	#989—	55.77 on
			account
			<hr/>
	Total		\$5206.90

Telephone Market 8910

Newark, N. J., June 2, 1922 19

Mr. A. L. Kirby and J. P. Duffy, Receivers for Burn-  
rite Coal Briquette Co.

TO THOMAS F. BRYCE  
General Insurance  
810 Broad St.

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*Policy*

*Number Company Effective Coverage*

U. C. 827160 Ocean June 1 Liability & Property  
Accident 1922 damage on All  
American Trucks 156.00

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. ~~A~~ 6

Telephone Market 8910

Newark, N. J., June 7, 1922 19

M Alfred L. Kirby & J. P. Duffy, Receivers for Burn-  
rite Coal Briquette Company,

To THOMAS F. BRYCE

General Insurance

810 Broad St.

---

*Policy*

<i>Number</i>	<i>Company</i>	<i>Effective</i>	<i>Coverage</i>	
6972700	Ocean, Ac-	June 2, 1922	Fire Ins. on Buildings, Machinery etc. 6,000.	118.32
315	Niagara Fire Ins.	June 2, 1922	Fire Ins. Buildings, Machinery, etc. \$1,000.	19.72
				<hr/> \$138.04

Received Payment.

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. ~~A-2~~ 7



Telephone Market 8910

Newark, N. J., June 16th, 1922.

M Burnrite Coal Briquette Co., 543 N. J. Railroad  
Ave., City.

To THOMAS F. BRYCE  
General Insurance  
810 Broad St.

---

---

*Policy*

*Number Company Effective*

*Coverage*

3507	Providence June 5	Fire Ins. on Buildings	
	Washington 1922	etc.	98.60

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. ~~A-4~~ 8

55-9

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of  
Equity  
in ~~Bankruptcy~~

Newark, N. J. July 10/1922 No. 19

FIDELITY UNION TRUST COMPANY

Pay

to the

order of Thos F. Bryce \$392.64/100  
Three hundred and Ninety two and 64/100 Dollars  
For Fire Ins. etc.

A. L. KIRBY & JOHN P. DUFFY  
Receivers for  
Burnrite Coal Briquette Co.

Countersigned

.....

*Referee.*

(Stamped)

1st L Receiving Teller

(Endorsed)

Thos F Boyce

Pay to the Order of  
Fidelity Union Trust Co.  
Newark, N. J.  
Dime Savings Institution

Pay to the Order of  
Fidelity Union Trust Co.  
Newark, N. J.  
Dime Savings Institution

Bill No.  
29/5/14-k  
Order No.  
37980

To JOHN A. ECKERT & Co. Dr.  
Insurance  
90 John St.

New York, July 31, 1922

**Alfred L. Kirby and John P. Duffy Rec'r. in Equity of U. S. District Court for Burnrite Coal Briquette Co., E. S. of New Jersey R. R. Ave., Betw. Alpine and Earl Strs., Newark, N. J.**

T. D. M.

Telephone Beckman 8700

### Report of Special Master

463

[illegible]

Approved . . . . .  
Received . . . . .  
Date Rec'd . . . . .  
Check No. . . . .  
Invoice No. ~~4-20~~ 30

No. 5

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
In the Matter of

Newark, N. J. Aug 17 1922

In Equity

Pay to the

Order of J. A. Eckert & Co.

\$256.36/100

Two hundred fifty six dollars thirty six cents Dollars.

BURNITE COAL BRIQUETTE Co.

A. L. Kirby and John P Duffy

Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55 - 7 Newark, N. J.

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Invoice

July 31st

256.36

Less Discount

Net Amount of Check

Checked

and

Approved by

(Endorsed)

Pay to the Order of  
Mechanics and Metals National Bank  
of the City of New York  
John A. Eckert & Co.

Pay Any Bank, Banker or Trust Co.  
Or Order  
Federal Reserve Bank  
Aug 23, 1922  
1-120 of New York 1-120  
Prior Endorsements Guaranteed

Pay to the Order of  
Federal Reserve Bank of New York  
Prior Endorsements Guaranteed  
1-4 Aug 22 1922 1-4  
Mechanics and Metals National Bank  
New York, N. Y.  
James House, Cashier.

---

Telephone Market 8910

Newark, N. J., 24 July 1922 19

M A. L. Kirby & J. P. Duffy Rec. Burnrite Coal Briquette Co.

To THOMAS F. BRYCE  
General Insurance  
810 Broad St.

---

*Policy*

*Number Company Effective Coverage*

164080	Tokio	7/12/22	5,000	Fire Ins on Plant	98
1892909	Globe	7/12/22	5,000	" " " "	98
& Rutgers					

---

196.

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. ~~A-23~~ 19

*Report of Special Master*

Telephone Market 8910

Newark, N. J., 26 July 1922

M A. L. Kirby and J. P. Duffy et al.

TO THOMAS F. BRYCE  
General Insurance  
810 Broad St.

*Policy**Number Company Effective Coverage*

1234830	Standard	7/26/22	3,000 Fire Ins on	
			plant	59 16
	Approved	.....		
	Received	.....		
	Date Rec'd	.....		
	Check No.	.....		
	Invoice No.	<del>A-15</del> 20		

Telephone Market 8910

Newark, N. J., 27 July 1922 19

M A. L. Kirby &amp; J. P. Duffy Rec. Burnrite Coal Briquette Co.

TO THOMAS F. BRYCE  
General Insurance  
810 Broad St.

*Policy**Number Company Effective Coverage*

G. C.				
163240	Ocean	27/7/22	Public Liability on	
			Plant	12.50
	Approved	.....		
	Received	.....		
	Date Rec'd	.....		
	Check No.	.....		
	Invoice No.	<del>A-24</del> 21		

Telephone Market 8910

Newark, N. J., Aug 3/1922

M Burnrite Coal Briquette Company

Alfred L. Kirby & John P. Duffy, Receivers

To THOMAS F. BRYCE

General Insurance

810 Broad St.

*Policy*

*Number Company Effective Coverage*

73804 Concordia	July 26	Fire Ins on Plant—	
	1922	\$5,000.	98.60

Received Payment.

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. A-35

In the U. S. District Court.

55-7

District of New Jersey

in the matter of

Equity

in ~~Bankruptcy~~.

Newark, N. J. Aug. 3, 1922 No. 7

MERCHANTS and MANUFACTURERS NATIONAL BANK

Pay

to the

order of	Thomas F. Bryce	\$307 10 100
----------	-----------------	--------------

Three Hundred Seven Dollars Ten Cents Dollars

FOR Invoices July 24th, July 27th, Aug. 3rd.

BURNRITE COAL BRIQUETTE CO. TRUSTEE

A. L. Kirby & John P. Duffy Receivers

Countersigned

.....  
*Referee.*

(Endorsed) : Thomas F. Bryce

Pay to the Order of  
Merchants & Manufacturers National Bank

NEWARK, N. J.

DIME SAVINGS INSTITUTION

PROOF NUMBER

13

Aug 4 1922



## Report of Special Master

469

IN THE U. S. DISTRICT COURT,  
DISTRICT OF NEW JERSEY,  
in the matter of

IN EQUITY  
NEWARK, N. J. Aug 17 1922

Pay to the order of Thomas F. Bryce \$59 16 100  
Fifty Nine Dollars Sixteen Cents Dollars  
BURNBITE COAL BRIQUETTE CO.  
A. L. Kirby and John P. Duffy Receivers

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55-7 NEWARK, N. J.

(Endorsed): Thomas F. Bryce

RECEIVED PAYMENT  
Through the Newark Clearing House  
Prior Endorsements Guaranteed  
Aug 18 1922  
National State Bank No. 2

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Invoice  
July 26th 59 16

Less Discount

Net Amount of Check

Checked  
and  
Approved by



NEWARK, N. J., July 29th., 1922

Mr. ALFRED L. KIRBY, ET AL.

TO T. C. MOFFATT & CO., DR.

BROKERS INSURANCE AGENTS

Essex Building, 31-35 Clinton Street

Telephones 0611-0612 Mulberry

Fire  
Life  
Accident  
Health  
Marine  
Burglary  
Explosion  
Compensation  
Liability  
Plate Glass  
Steam Boiler  
Automobile  
Surety Bonds  
Tornado  
Sprinkler Leakage  
Use and Occupancy  
Rents  
Profits

DATE	NO. POLICY	COMPANY	PROPERTY
------	------------	---------	----------

1922

July 20	593941	Stuyvesant	Buildings—	5000 00	98 60
---------	--------	------------	------------	---------	-------

Burnrite Coal Briquette Co.

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. A-48 25

Received bills, paid by check,  
returned only on request.

In the U. S. District Court.

55-7

District of New Jersey

in the matter of

NEWARK, N. J. Aug. 3, 1922 No. 8

MERCHANTS AND MANUFACTURERS NATIONAL BANK  
Equityin ~~Bankruptcy~~.

Pay

to the

order of T. C. Moffatt & Co \$788 80/100  
Seven Hundred Eighty Eight Dollars Eighty Cents

For Invoices July 24th &amp; July 29th

BURNRITE COAL BRIQUETTE CO. TRUSTEE  
A. L. Kirby & John P. Duffy Receivers

Countersigned

.....

*Referee.*

(Endorsed)

Pay to the Order of  
NEWARK TRUST CO.

NEWARK, N. J.

T. C. MOFFATT &amp; Co.

Pay to the Order of  
National Newark & Essex Banking Co.  
55-20 Newark, N. J. 55-20Prior Endorsements Guaranteed  
NEWARK TRUST CO.

NEWARK, N. J.

RECEIVED PAYMENT

Through the Newark Clearing House  
Prior Endorsements Guaranteed

AUG 4 1922

National Newark &amp; Essex Banking Co.

FORM 40CS

Please Quote Bond or Policy Number in all communications, and return this bill with remittance.

CAPITAL \$5,000,000. ....

(Cut of Eagle)

A. L. KIRBY

828 Broad St

TO NATIONAL SURETY COMPANY, DR.

FRANKLIN M. WOLF

Manager

Prudential Bldg., Newark, N. J.

Fidelity and Surety Bonds, Burglary Insurance  
and Automobile Bail Bonds

For Premiums as follows:

Number	Description	Premium From 19	To 19	Amount
				Due
	Receivers			
	Burnrite Coal			
	Briq. Co.	5-1-22		\$125

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. ~~A-3~~ 1

Please quote our number in all communications, and return this bill with remittance.

Pay Only by Check or Draft.

Unless Expressly Requested, No Receipt Will be Returned Upon Payment of This Bill.

In the U. S. District Court.

55-7

District of New Jersey

in the matter of

Equity

in ~~Bankruptcy~~.

NEWARK, N. J. Aug. 3, 1922 No. 9

MERCHANTS and MANUFACTURERS NATIONAL BANK

Pay

to the

order of Natl. Surety Company \$125 00 /100

One Hundred Twenty Five Dollars Dollars

FOR Invoice May 1, 1922.

BURNRITE COAL BRIQUETTE CO. TRUSTEE

A. L. Kirby &amp; John P. Duffy Receivers

Countersigned

.....  
Referee.

(Endorsed)

Pay to the Order of the  
National Newark & Essex Banking Co.

NEWARK, N. J.

NATIONAL SURETY CO.

Pay to the Order of

ANY BANK, BANKER OR TRUST CO.

AUG 11 1922

National Newark &amp; Essex Banking Co.

55-1 NEWARK, N. J. 55-1

RECEIVED PAYMENT

Through the Newark Clearing House

Prior Indorsements Guaranteed

AUG 11 1922

Natl. Newark &amp; Essex Banking Co. No. 1

*Report of Special Master*

475

Telephone Market 8910

NEWARK, N. J., Aug. 18 1922

M A. L. Kirby & John P. Duffy,

Receivers for Burnrite Briquette Coal Co.

TO THOMAS F. BRYCE

GENERAL INSURANCE

810 Broad St.

---

POLICY NUMBER	COMPANY	EFFECTIVE	COVERAGE
501826	National Fire & Ma- rine Ins.	Aug. 22 1922	\$2,500. Fire Ins. on Plant 49.30

---

Received Payment,

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 69

476

*Report of Special Master*

Telephone Market 8910

NEWARK, N. J., Aug. 24 1922

M Alfred L. Kirby &amp; John P. Duffy,

Receivers for Burnrite Coal Briquette Co.

TO THOMAS F. BRYCE

GENERAL INSURANCE

810 Broad St.

POLICY NUMBER	COMPANY	EXPENSES		COVERAGE
		<del>EFFECTIVE</del>		
5479	State of Penna. Aug. 16 1923	\$5,000.	Fire Ins. on Plant	98.60
12583	Columbian Nat'l Aug. 16 1923	\$5,000.	Fire Ins. on Plant	98.60
				197.20

Received Payment,

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 86



This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee, or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Aug. 18—	49 30
Aug. 24th	197 20

Less Discount

Net Amount of Check	246 50
---------------------	--------

Checked  
and  
Approved by

IN THE U. S. DISTRICT COURT  
DISTRICT OF NEW JERSEY,

In the matter of

NEWARK, N. J. Aug. 25 1922

IN EQUITY

Pay to the

Order of Thomas F. Bryce \$246 50 100  
Two Hundred Forty Six Dollars Fifty Cents Dollars

To the BURNITE COAL BRIQUETTE Co.  
A. L. Kirby and John P. Duffy  
Receivers

MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55-7 NEWARK, N. J.

(Endorsed): Thomas F. Bryce

FIRST TELLER

RECEIVED PAYMENT  
Through the Newark Clearing House  
Prior Indorsements Guaranteed  
AUG 26 1922  
National State Bank. No. 2

## Report of Special Master

Telephone Market 8910  
 NEWARK, N. J., 6 Oct 1922  
 M Burnrite Coal Briquette Company  
 TO THOMAS F. BRYCE  
 GENERAL INSURANCE  
 810 Broad St.

POLICY NUMBER	COMPANY	EFFECTIVE	COVERAGE	
164080	Tokio	7 12/22	Balance due on 7/24 statement	60
1892909	G & R	7/12/22	" " " " " "	60
1271	Sterling	5 15/22	Pro-Rata Can. on \$25,000 30 days	41 05
1272	Firemens	5/15/22	" " " " " "	41 05
802994	Western	9 26/22	\$10,000 Fire Ins on Plant	197 80
74810	National	9/26/22	\$10,000 " " " " " "	197 80
M.E. 7243	Ocean	10 5/22	\$1,000 Payroll Hold-up Ins.	12 50
#160	Chicago	9 26/22	\$7,000 Fire Ins.	138.56
1574	Ohio Miller	9 20/22	30,000 Fire Pro Rata Can. 16 days	\$629.96
				45.99
			Received Payment,	\$675.95

Approved .....  
 Received .....  
 Date Rec'd .....  
 Check No. ....  
 Invoice No. 260.....

*Report of Special Master*

479

Telephone Market 8910

NEWARK, N. J., 14 October 1922

M Burnrite Coal Briquette Company

TO THOMAS F. BRYCE

GENERAL INSURANCE

810 Broad St.

---

POLICY

NUMBER	COMPANY	EFFECTIVE	COVERAGE
--------	---------	-----------	----------

MJ 8793	Ocean	10/13/22	Interior Office Robbery
			12 50

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 273

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.		IN THE U. S. DISTRICT COURT DISTRICT OF NEW JERSEY in the matter of		No. 195	
Invoices		IN EQUITY		NEWARK, N. J. Oct 25 1922	
Oct 6th	675 95	Pay to the			
" 14th	12 50	Order of		Thomas F. Bryce	
Less Discount		Six Hundred Eighty Eight Dollars Forty Five Cents		\$688 45/100	
				Dollars	
Net Amount of Check	688 45	To the		BURNRITE COAL BRIQUETTE Co.	
		MERCHANTS AND		A. L. Kirby and John P. Duffy	
Checked		MANUFACTURERS		Receivers	
and		NATIONAL BANK			
Approved by		55-7 NEWARK, N. J.			

(Endorsed): Thomas F. Bryce

## RECEIVED PAYMENT

Through the Newark Clearing House  
Prior Indorsements Guaranteed  
Oct 26 1922  
National State Bank No. 2

*Report of Special Master*

481

G. F. Sommer

Fred E. Sommer

Newark, N. J., November 9th. 1922.

Messrs. A. L. Kirby and J. P. Duffy, etc.,

Fire  
Liability  
Automobile  
Plate Glass  
Burglary  
Life  
Boiler  
Accident  
Surety Bonds

To G. F. SOMMER & SON, Dr.

Insurance

41 Clinton Street

<i>Date</i>	<i>Policy No.</i>	<i>Company</i>	<i>Premium</i>
Nov. 14	B-1079293	Travelers	Steam Boiler Policy \$63.56

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 332.....

No. 345

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

In Equity

Newark, N. J. Dec. 11 1922

Pay to the  
order of G. F. Sommer & Son \$63.56  
Sixty-three Dollars Fifty-six cents Dollars  
BURNETT COAL BRIQUETTE Co.  
A. L. Kirby and John P. Duffy  
Receivers

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Invoices	63.56
Nov 9th	
Less Discount	
Net Amount of Check	
Checked and Approved by	

*Report of Special Master*

483

(Endorsed.)

Pay to the order of  
National Newark & Essex Banking Co.  
Newark, N. J.  
G. F. Sommer & Son  
Brokerage Account

Pay to the order of  
Any Bank, Banker or Trust Co.  
Prior Endorsements Guaranteed  
Dec. 5 1922  
National Newark & Essex Banking Co.  
Newark  
55-1                      N. J.                      55-1

Received Payment  
Through the Newark Clearing House  
Prior Indorsements Guaranteed  
Dec 15 1922  
Natl. Newark & Essex Banking Co. No. 1

New York, Nov. 17th. 1922

M. A. L. Kirby &amp; John P. Duffy Receiver in Equity

Burnrite Coal Briquette Co.

To

SMYTH, SANFORD &amp; GERARD

Incorporated

Insurance Brokers

68 William Street

Telephone

John 5225

Cable  
Fosford, N. Y.

Date	Policy No.	Company	Expiration	Location and Description	Amount	Rate	Premium
10/9/22	Binder	Lloyds	11/14/22	Bldg. & Machy. E/S. New Jersey	7500	1.972	P/R. 14.63
10/20/22	E. P. 642	Automobile	11/14/22	Rialroad Ave. Between Alpine &	23000	"	" 30.31
10/10/22	E. P. 643	"	"	Earl Sts. Newark. N. J.	12000	"	" 22.42
11/14/22	12058	Automobile	11/14/23	do	42500	"	" 838.10
							905.46

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 390 .....

(In lead pencil.)

66.56



All Premiums Payable in New York Exchange

Jersey City, N. J. November 14, 1922.

Messrs. Smyth, Sanford & Gerard.

MAPLE LEAF UNDERWRITERS, Inc.

Insurance Agents

No. 1 Montgomery Street

For Premiums Due

Date	Term	Company	Location	Policy	Amount	Earned Premium
10 9/22				App. 519	\$7500	\$14.63
to		"Lloyd's"	A. L. Kirby et al,			
11 14/22			Newark, N. J.			
			@ 1.972			

Received

(Clock face with hand pointing to 7)  
Smyth, Sanford & Gerard, Inc.  
Nov 15 1922

*Report of Special Master*

## FOREIGN

## AUTOMOBILE INSURANCE COMPANY

Hartford, Conn.

New York Branch Office

100 William St.

N. Y. C.

\$23,000.00

No. E. P. 642

New York November 15th 1922.

This is to certify, that A. L. Kirby & John P. Duffy  
 Rees. in Equity Burnrite Coal Briquette Co. have  
 insurance by this company, against loss or dam-  
 age by fire to the amount of Twenty-three thousand and  
 00 100 ..... Dollars  
 on .....  
 contained in ....situate 543 New Jersey Railroad Ave.  
 Newark, N. J.....  
 From Oct. 20th 1922 to Nov. 14th 1922      Rate 1.972  
 Premium \$30.31

This certificate is issued and accepted subject to all the  
 terms and conditions embraced in the New York  
 Standard Fire Policy of this company issued at its  
 New York office.

J. S. TURN, Secretary.

E. L. BREEN

Superintendent.

Form F-10 N. Y. 1M 1-21 F-B

FOREIGN

AUTOMOBILE INSURANCE COMPANY

Hartford, Conn.

New York Branch Office

100 William St.

N. Y. C.

\$12,000.00

No. E. P. 643

New York November 15th 1922.

This is to certify, that A. L. Kirby & John P. Duffy  
receivers etc in Equity Burnrite Coal Briquette Co.  
have insurance by this company, against loss or dam-  
age by fire to the amount of Twelve thousand and  
00/100 ..... Dollars  
on .....  
contained in ....situate 543 N. J. R. R. Ave., Newark,  
N. J. ....  
From October 10th 1922 to November 14th 1922 Rate  
1.972 Premium, \$22.42

This certificate is issued and accepted subject to all the  
terms and conditions embraced in the New York  
Standard Fire Policy of this company issued at its  
New York office.

J. S. TURN, Secretary.

E. L. BREEN

Superintendent.

Form F-10 N. Y. 1M 1-21 F-B

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

Newark, N. J. Dec 21 1922

In Equity

Pay to the order of Smyth, Sanford & Gerard \$905 46/100 Dollars  
Nine hundred five dollars forty-six cents  
BURNITE COAL BRIQUETTE Co.  
A. L. Kirby and John P. Duffy  
Receivers

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice	905.46
Nov 17	

Less Discount	
---------------	--

Net Amount of Check	
---------------------	--

Checked and Approved by	
-------------------------------	--

*Report of Special Master*

489

(Endorsed.)

Pay to the order of  
The Equitable Trust Co.  
of New York  
For deposit  
Smyth, Sanford & Gerard,  
Incorporated  
CHARLES S. FORBES,  
Treasurer

Pay any Bank, Banker or Trust Co.  
or order  
Federal Reserve Bank  
Dec 23 1922  
1-120 of New York 1-120  
Prior Endorsements Guaranteed

Pay any Bank, Banker or Trust Co.  
For Collection and Remittance  
All prior endorsements guaranteed  
Dec. 22 1922  
The Equitable Trust Co.  
1-217 of New York 1-217  
A. A. MILLER, TREASURER

Our offices represent 30 of the largest companies in the world

K

"Always on the Square"

Newark, N. J., Sept. 20, 1922

Messrs. Alfred L. Kirby & John P. Duffy, Receivers,  
Burnrite Coal Briquette Co., 543 N. J. Railroad Ave.

To CHARLES F. KRAEMER, Dr.  
General Insurance Agency  
776 Broad Street

Phones 0780-0781 Mulberry

We cover against  
Fire, Tornado,  
Burglary, Accident,  
Health, Boiler,  
General, Liability,  
Plate Glass.

Date	Company	Number	Property Covered	
Aug 30/23	Stuyvesant	1111203	buildings	\$49.30
"	Amer. Nat.	877	"	49.30
				<hr/>
				\$98.60

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 197 .....

No. 268

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

Newark, N. J. Nov. 16 1922

In Equity  
Pay to the  
order of Chas. F. Kraemer  
Ninety-eight dollars sixty cents

\$98 60 100

Dollars

BURNETTE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy  
Receivers

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

(Endorsed.)

Pay to the order of  
Merchants & Mfrs. Nat'l Bank  
Newark, N. J.  
C. F. KRAEMER

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Invoice	98.60
Sept. 20-	
Less Discount	
Net Amount of Check	98.60

Checked  
and  
Approved by

Our offices represent 30 of the largest companies in the  
world

K

"Always on the Square"

Newark, N. J., Dec. 30, 1922

Messrs. Kirby & Duffy, Receivers,  
Barnrite Coal Briquette Co., 543 N. J. Railroad Ave

To CHARLES F. KRAEMER, Dt.

General Insurance Agency

776 Broad Street

Phones 0780-0781 Mulberry

We cover against  
Fire, Tornado,  
Burglary, Accident,  
Health, Boiler,  
General, Liability,  
Plate Glass.

Date	Company	Number	Property Covered	
Nov 18/23	Stuyvesant	1111466	buildings	98.60
Approved .....				
Received .....				
Date Rec'd .....				
Check No. ....				
Invoice No. 460 .....				

(In lead pencil.)

Renewal



IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of  
In Equity  
Newark, N. J. Jan 30 1923

Pay to the  
order of Chas. F. Kraemer \$98 60/100  
Ninety-eight dollars sixty cents Dollars  
BURNRITE COAL BRIQUETTE Co.  
A. L. Kirby and John P. Duffy Receivers

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

(Endorsed.)

Pay to the order of  
Merchants & Mfrs. Nat'l Bank  
Newark, N. J.  
C. F. KRAEMER

(In circle.)  
Proof Number  
6  
Jan 31 1923

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Invoice	98.60
Dec 30	
Less Discount	
Net Amount of Check	98.60
Checked and Approved by	

*Report of Special Master*

Telephone Market 8910

Newark, N. J., Feb. 13 1923

M A. L. Kirby, Receiver for Burnrite Coal Briquette  
Co.,

To THOMAS F. BRYCE

General Insurance

810 Broad St.

---

*Policy**Number Company Effective Coverage*

---

M.S. 39756 Ocean Feb. 6th \$1,000. Safe Policy 9.35

Received Payment,

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 620.....

*Report of Special Master*

495

Telephone Market 8910

Newark, N. J., Feb. 21 1923

M A. L. Kirby, et al

To THOMAS F. BRYCE  
General Insurance  
810 Broad St.

---

*Policy*

*Number Company Effective Coverage*

---

U. C.	1923	
861599	Ocean Feb. 19th	Liability & Prop.
		Damage on
		Packard Truck
		156.00

Credit

U. C.		
827160	“ Jan. 1/22	Return Premium Can-
		celled pro rata 8
		months 19 days
		34.45

---

\$111.55

(In lead pencil) 121 55

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 621.....

No. 704

IN THE U. S. DISTRICT COURT,  
District of New Jersey,

In the Matter of

Newark, N. J. March 22 1923

In Equity

Pay to the

Order of Thomas F. Bryce \$120 90/100  
One Hundred Twenty Dollars Ninety Cents Dollars

BURNSIDE COAL BRIQUETTE CO.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55-7 NEWARK, N. J.

(Endorsed.)

Thomas F. Bryce

Received Payment

Through the Newark Clearing House

Prior Endorsements Guaranteed

Mar 26 1923

National State Bank No. 2

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice

Feb 21st

120 90

Less Discount

Net Amount of Check

Checked

and

Approved by

Telephone Market 8910

Newark, N. J., May 7 1923

M Alfred L. Kirby & John P. Duffy, Receivers for  
Burnrite Coal Briquette Co.

To THOMAS F. BRYCE  
General Insurance  
810 Broad St.

<i>Policy</i>		<i>Number Company Effective</i>		<i>Coverage</i>	
145145	Henry Clay	May 11/23	\$10,000	Fire	
			Insurance		197.20
3600	Prov. Wash	May 11/23	5,000.	Fire	
			Insurance		98.60
3601	Prov. Wash	June 5/11	5,000.	Fire	
			Insurance		98.60
					<hr/>
					\$394.40

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 807.....

*Report of Special Master*

Telephone Market 8910

Newark, N. J., May 10 1923

M Alfred L. Kirby & John P. Duffy, Receivers for  
Burnrite Coal Briquette Co.To THOMAS F. BRYCE  
General Insurance  
810 Broad St.

---

*Policy**Number Company Effective Coverage*

---

E. Y.

698169 Ocean May 15/23 Employers' Com-  
pensation Ins. 119.00

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 808.....

*Report of Special Master*

499

Telephone Market 8910

Newark, N. J., May 15 1923

M Alfred L. Kirby & John P. Duffy, Receivers for  
Burnrite Coal Briquette Co.

To THOMAS F. BRYCE  
General Insurance  
810 Broad St.

---

*Policy*

*Number Company Effective Coverage*

---

1016990 Century 5/11/23 Fire Ins. on Bldgs., Machinery, Etc 543 N. J. R. R. Ave.	98.60
---	-------

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 809.....

500

*Report of Special Master*

Telephone Market 8910

Newark, N. J., May 22nd 1923

M A. L. Kirby & John P. Duffy, Receivers for Burnrite  
Coal Briquette Co.

To THOMAS F. BRYCE  
General Insurance  
810 Broad St.

*Policy**Number Company Effective Coverage*

B1384930	Fireman's	5/16/23	Fire Ins. on Buildings, etc	98
	Fund			
5306	Sterling	5/16/23	" " " "	98
7503220	Scottish			
	Union & Ntl	6/2/23	" " " "	118
338	Niagara	6/2/23	" " " "	15

\$337.

Received Payment.

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 819.....



*Report of Special Master*

501

Telephone Market 8910

Newark, N. J., June 13, 1923

M A. L. Kirby & John P. Duffy, Receivers in Equity  
for Burnrite Coal Briquette Co.,

To THOMAS F. BRYCE  
General Insurance  
810 Broad St.

---

*Policy  
Number Company Effective Coverage*

---

3095036	Globe & July 12/23	\$5,000. Fire Ins.	
	Rutgers	on Bldgs, &c	98 60
164308	Tokio July 12/23	5,000 Fire Ins.	
		on Bldgs, &c	98 60
			<hr/>
		\$	197.20

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 850.....

No. 872

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
In the Matter of

In Equity                      Newark, N. J. July 27 1923

Pay to the                      Order of Thomas Bryce                      \$1000 00/100  
One Thousand Dollars                      Dollars

To the                      A. L. Kirby and John P. Duffy  
MERCHANTS AND                      RECEIVERS  
MANUFACTURERS

NATIONAL BANK  
55 - 7    NEWARK, N. J.

(Indorsed.)

Thomas Bryce

Received Payment  
Through the Newark Clearing House  
Prior Endorsements Guaranteed  
Jul 28 1923

National State Bank No. 2

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

On a/c                      1000

Less Discount

Net Amount of Check

Checked

and

Approved by

WG.

Bill No. 7390

30/5/3/K.

Order No.

Alfred L Kirby and John P. Duffy Receivers in Equity of United States District Court for  
Burnrite Coal Briquette Co., E. S. of New Jersey R. R. Ave., Betw. Alpine and Earl Strs.,  
Newark, N. J.

T. D. M.

Telephone, Beckman 8700

To JOHN A. ECKERT & Co. Dr.

Insurance

90 John St.

New York, April 25-1923.

# Report of Special Master

503

Policy Number	Company	Commencement	Term of Policy Yrs.	Expiration	B.&C. Form	Property Insured Form	Amount	Rate	Premium
					N14728				
6110286	Lond Assur.	19 May 23	1	19 May 24	1500		1500	1.972	29 58
81699	Atlas Undr.	19 May 23	1	19 May 24	1500		1500	"	29 58
2701	Aetna Hfd.	19 May 23	1	19 May 24	5000		5000	"	98 60
11271	Aetna Hfd.	19 May 23	1	19 May 24	5000		5000	"	98 60
									256 36

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 784

No. 989

IN THE U. S. DISTRICT COURT,  
District of New Jersey,

In the Matter of

In Equity  
Newark, N. J. Oct. 31 1923

Pay to the

Order of O'Gorman & Young Inc \$55 77/100

Fifty Five Dollars Seventy Seven Cents Dollars

BURNRITE COAL BRIQUETTE Co.

To the A. L. Kirby and John P. Duffy

Receivers

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55-7 NEWARK, N. J.

(Endorsed)

Received Payment

Through the

Newark Clearing House

Nov — 3 1923

Prior Endorsements Guaranteed

—No. 5—

Fidelity Union Trust Co.

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Invoice

Oct 26th 55 77

Less Discount

Net Amount of Check

Checked

and

Approved by

Pay to the Order of

Fidelity Union Trust Co.

E 299 Newark, N. J. E 299

O'Gorman & Young

O'Gorman & Young, Agents

O'Gorman & Young, Inc.

No. 2

# Report of Special Master

505

## ANALYSIS OF LEGAL AND PROFESSIONAL EXPENSES ITEM- IZED TO SET FORTH EACH INVOICE AND VOUCHER SEPARATELY.

Amount \$3480.07

<i>Name</i>	<i>Invoice</i>	<i>Voucher</i>
1. E. Coons	108.00	#261— 108.00
2. " "	65.70	#787— 65.70
3. " "	18.00	#924— 18.00
4. " "	131.25	#1042— 131.25
5. " "	39.90	#1131— 39.90
6. " "	22.70	#363— 22.70
7. A. Harris	25.00	#298— 25.00
8. Kessler & Kessler	50.00	#285— 50.00
9. A. L. Kirby	102.95 )	#181— 200.00 )
10. A. L. Kirby	32.05 )	#237— 200.00 )
		<hr/> 400.00
		Balance of \$175.00 returned to treasury
11. A. L. Kirby	90.00 )	
	<hr/> 225.00	
12. T. C. Bergen	10.00	#354— 10.00
13. Smith & Slingerland	110.00	#303—1283.49 ) #226—1277.10 )
		<hr/> 2560.59
		Difference paid off Mortgage .
14. Joseph L. Smith	1000.00	#528—1000.00
15. Merritt Lane	1000.00	#527—1000.00
16. Joseph L. Smith	130.81	#672— 130.81
17. A. W. Cross	106.45	#788— 106.45
18. A. W. Cross	18.00	#925— 18.00
19. N. W. Bindseil	58.80	#930— 58.80
20. Merritt Lane	229.76	#1074— 229.76

<i>Name</i>	<i>Invoice</i>	<i>Voucher</i>
21. Joseph L. Smith	17.11	#1072— 17.11
22. M. W. Ogden	1.20	#1119— 1.20
	<hr/> 3367.57	
23. Fidelity Union Trust Co.	112.50	Not paid
Total	<hr/> 3480.07	

## EXHIBIT NO. P-22-A.

November 13th, 1922.

John P. Duffy, and Alfred L. Kirby, Esqs.,  
Receivers Burnrite Coal Briquette Co.

To Elizabeth Coons,  
Prudential Bldg., Newark, N. J.

---

In re matter of brief, (Delaware)  
90 fol. (5 copies) at \$.40, 20, 20, 20, 20  
(Sunday work) ..... \$108.

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 340.....

This Check is Issued in Full Payment of Items Herein, with Endorsement Hereon, by Payee, or Agent, is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice  
Nov. 13  
(Stamped 2)

108 —

Less Discount

Net Amount of Check  
Checked  
and  
Approved by

108 —

(Endorsed) : Elizabeth Coons

RECEIVED PAYMENT  
Through the Newark Clearing House  
Prior Indorsements Guaranteed  
Nov 18 1922  
FIDELITY UNION TRUST Co. No. 5

IN THE U. S. DISTRICT COURT,  
DISTRICT OF NEW JERSEY,  
in the matter of

NEWARK, N. J. Nov 16 1922

IN EQUITY

Pay to the

Order of Elizabeth Coons

One Hundred Eight Dollars \$108 00 100 Dollars

BURNITE COAL BRIQUETTE Co.

To the A. L. Kirby and John P. Duffy

Receivers

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55-7 NEWARK, N. J.

**EXHIBIT NO. P-22-L.**

April 20th, 1923.

Edward G. Riggs, et als., Receivers  
Burnrite Coal Briquette Co.

To ELIZABETH COONS,  
Prudential Bldg., Newark, N. J.

---

In re Brief, United States Circuit Court  
of Appeals, 219 fol. (2 copies) at \$.20 and  
\$.10 ..... \$65.70

Approved .....	Received Payment,
Received .....	
Date Rec'd .....	
Check No. ....	
Invoice No. 772.....	

(In lead pencil): Mail to Mr. Kirby  
to send check to



This Check is Issued in Full Payment of Items Herein. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

No. 787

IN THE U. S. DISTRICT COURT,  
DISTRICT OF NEW JERSEY,  
in the matter of

NEWARK, N. J. May 5 1923

May 1st 65 70

IN EQUITY

Pay to the order of Elizabeth Coons \$65 70/100  
Sixty Five Dollars Seventy Cents Dollars

BURNRITE COAL BRIQUETTE Co.

To the Merchants and Manufacturers  
A. L. Kirby and John P. Duffy  
Receivers

Net Amount of Check

Checked and Approved by

(Endorsed) : Elizabeth Coons  
RECEIVED PAYMENT  
Through the Newark Clearing House  
Prior Indorsements Guaranteed  
MAY 8 1923  
Fidelity Union Trust Co. No. 5

**EXHIBIT NO. P-22-N.**

September 14th, 1923.

Receivers Burnrite Coal Briquette Co.

To Elizabeth Coons

Prudential Bldg., Newark, N. J.

---

In re Petition for rehearing before United  
States Circuit Court of Appeals, for the  
Third Circuit, In re Burnrite Coal Bri-  
quette Co. v. Receivers.....  
(3 copies) 45 Fol. at \$.20, 10, 10..... \$18.00

Approved .....	Received Payment,
Received .....	
Date Rec'd .....	
Check No. ....	
Invoice No. 1007.....	

This Check is Issued in Full Payment of Items Herewith, Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice

9 14/3

Less Discount

Net Amount of Check  
(Stamped 3)

Checked

and

Approved by

No. 924

IN THE U. S. DISTRICT COURT,

DISTRICT OF NEW JERSEY,

in the matter of

IN EQUITY NEWARK, N. J. Sept. 14 1923

Pay to the

order of

Eighteen Dollars

Elizabeth Coons

\$18 00/100

Dollars

BURNITE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55-7 NEWARK, N. J.

(Endorsed): Elizabeth Coons

Frederick A. Lorentz.

RECEIVED PAYMENT

Through the Newark Clearing House

SEP 17 1923

Prior Indorsements Guaranteed

No. 5

FIDELITY UNION TRUST Co.

Report of Special Master

511

## EXHIBIT NO. P-22-Q.

November 1st, 1923.

E. Coons,  
Prudential Bldg.,  
Newark, N. J.

---

To stenographic services rendered in re  
matter of Burnrite Coal Briquette Co.... \$131.25

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 1088.....

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice	
Nov 1/23	131 25
Less Discount	
Net Amount of Check	

Checked  
and  
Approved by

No. 1042

IN THE U. S. DISTRICT COURT,  
DISTRICT OF NEW JERSEY,  
in the matter of

IN EQUITY

NEWARK, N. J. Nov. 10 1923

Pay to the order of E. Coons \$131 25/100  
One Hundred Thirty One Dollars Twenty Five Cents Dollars

BURNRITE COAL BRIQUETTE CO.  
A. L. Kirby and John P. Duffy  
Receivers

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55-7 NEWARK, N. J.

*Report of Special Master*

(Endorsed)

Pay to order of  
United States Savings Bank  
E. Coons.

Pay to the Order of  
NATIONAL STATE BANK  
NEWARK, N. J.  
UNITED STATES SAVINGS BANK  
of Newark, N. J.  
W.M. G. TRAUTWINE, Treas.

RECEIVED PAYMENT  
Through the Newark Clearing House  
Prior Endorsements Guaranteed  
Nov 17 1923  
National State Bank No. 2

## EXHIBIT NO. P-22-U.

January 9th, 1924.

Receivers Barnrite Coal Briquette Co.

To E. Coons,  
Prudential Bldg.  
Newark, N. J.

Services rendered

\$39.90

Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 8.....

This check is issued in full payment of items herewith. Endorsement hereon, by Payee, or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not correct, Return at Once With Explanation.

Less Discount

Net Amount of Check

Checked

and

Approved by

(Stamped No. 2)

IN THE U. S. DISTRICT COURT,  
DISTRICT OF NEW JERSEY,

No. 1131

in the matter of

IN EQUITY                      NEWARK, N. J.    Feb 11    1924

Pay to the

order of              Elizabeth Coons

\$39 90 100

Thirty Nine Dollars Ninety Cents

Dollars

BRESHTE COAL BRUQUETTE CO.

To the

A. L. Kirby and John P. Duffy

Receivers

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55-7    NEWARK, N. J.

(Endorsed): Elizabeth Coons.

RECEIVED PAYMENT

Through the Newark Clearing House

FEB 14 1924

Prior Endorsements Guaranteed

No. 5

FIDELITY UNION TRUST CO.

## EXHIBIT NO. P-22-G.

December 6th, 1922.

Receivers, Burnrite Coal Briquette Co.

to

ELIZABETH COONS,

Prudential Bldg., Newark, N. J.

---

In re Further answer in suit commenced  
in Delaware against Burnrite Coal Bri-  
quette Co., 36 fol. (6 copies) ..... \$22.70

Received Payment,

Approved .....

Received .....

Date Rec'd .....

Check No. 363.....

Invoice No. Dec. 15/22.

(In ink): Latimore

Nutley \* \*

(In lead pencil): Mr Kirby.



This Check is Issued in Full Payment of Items Here-with. Endorsement Hereon, by Payee, or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice  
Dec. 6th 22 70

Less Discount

Net Amount of Check  
(Stamped 4)

Checked  
and

Approved by

IN THE U. S. DISTRICT COURT,  
DISTRICT OF NEW JERSEY,  
in the matter of

IN EQUITY NEWARK, N. J. Dec. 15 1922

Pay to the  
order of Elizabeth Coons \$22 70 100

Twenty Two Dollars Seventy Cents Dollars

BURNITE COAL BUQUETTE Co.

To the A. L. Kirby and John P. Duffy

MERCHANTS AND RECEIVERS  
MANUFACTURERS

NATIONAL BANK  
55-7 NEWARK, N. J.

(Endorsed): Elizabeth Coons.

RECEIVED PAYMENT  
Through the Newark Clearing House  
Prior Endorsements Guaranteed

DEC 18 1922  
Fidelity Union Trust Co. No. 5

## EXHIBIT NO. P-22-B.

ARTHUR HARRIS  
Counsellor at Law  
~~Essex Building~~  
NEWARK, N. J.  
763 Broad St

November 29, 1922.

Messrs. Kirby & Duffy,  
Receivers of Burnrite Coal Briquette Co.,  
Firemen's Building,  
Newark, N. J.

To Arthur Harris, Dr.

To professional services rendered; to tak-  
ing affidavits of claims of creditors of said  
Company \$25.00

Received Payment.

ARTHUR HARRIS

With thanks!

Approved .....  
Received .....  
Date Rec'd .....  
Check No. 298 .....  
Invoice No. Nov 28, 22

IN THE U. S. DISTRICT COURT,  
DISTRICT OF NEW JERSEY,  
in the matter of

NEWARK, N. J. Nov 28 1922

IN EQUITY

Pay to the  
order of

Arthur Harris  
Twenty Five Dollars \$25 00/100 Dollars

BURNITE COAL BRIQUETTE CO.  
A. L. Kirby and John P. Duffy  
Receivers

To the

MERCHANTS AND  
MANUFACTURERS

NATIONAL BANK  
55-7 NEWARK, N. J.

(Endorsed) : Arthur Harris

(Stamp on Back Illegible.)

This Check is Issued in Full Payment of Items  
Herewith. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Less Discount

Net Amount of Check

Checked

and

Approved by

EXHIBIT NO. P-22-C.  

---

SAMUEL I. KESSLER

NATHANIEL KESSLER

LAW OFFICES

KESSLER &amp; KESSLER

Union Building

9 Clinton St. Newark, N. J.

Telephone 9931-2 Market

February 24th, 1923.

A. L. Kirby & J. P. Duffy, Receivers,  
Burnrite Coal Briquette Co.,  
N. J. R. R. Ave., Alpine and Earl Sts.,  
Newark, New Jersey.

Gentlemen:

We herewith acknowledge receipt of \$50. as and  
for our fee in the Delaware matter.

Thanking you very kindly, we are,

Yours very truly,

SAMUEL I. KESSLER.

Enclosure

Approved .....

Received .....

Date Rec'd .....

Check No. 285 .....

Invoice No. Nov 24/22

This Check is Issued in Full Payment of Items  
 Herewith. Endorsement Hereon, by Payee or  
 Agent is Acknowledgment and Receipt in Full  
 Thereof. No Other Receipt is Required. If Not  
 Correct, Return at Once With Explanation.

50 00

Less Discount

Net Amount of Check

Checked

and

Approved by

IN THE U. S. DISTRICT COURT,  
 DISTRICT OF NEW JERSEY,  
 in the matter of

NEWARK, N. J. Nov. 24 1922

IN EQUITY

Pay to the

order of

Samuel Kessler

Fifty Dollars

\$50 00 100

Dollars

BURNRITE COAL BRIQUETTE CO.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55-7 NEWARK, N. J.

(Endorsed): Samuel Kessler  
 Kessler and Kessler

RECEIVED PAYMENT

Through the Newark Clearing House  
 Prior Endorsements Guaranteed

DEC 30 22

FEDERAL TRUST COMPANY No. 6

## EXHIBIT NO. P-22-D.

Oct. 26 1922.

Expenses in connection with first creditors meeting in Delaware.

Messrs. Berger	}
Tylee	
Kessler	
Smith	
Kirby	

R. R. fares & pullman	
return	50 00
Tip porter	50
Lunch etc	10 00
Taxi to Station	3 00
Dinners on train etc	12 45
Taxi home	2 00
To Mr. Tylee	25 00
	<hr/>
Paid	\$102.95
A. L. Kirby	
Traveling	

Approved .....  
 Received .....  
 Date Rec'd .....  
 Check No. 181  
 Invoice No. Oct. 25/22

EXHIBIT NO. P-22-E.  

---

Oct. 24/1922.

Expenses to Wilmington, Del. with Jos. L. Smith.

Taxi to Market St.	1.50
2 Tickets to Wilmington	8.00
Pullman	2.00
Lunch etc	3.25
To Station	1.00
2 Tickets to Newark and pullman	10.00
Dinner on train etc	3.50
Taxi home	1.50
“ Oct. 23rd	1.30

---

\$32.05

Paid

A. L. Kirby

J 8

Traveling

Approved .....

Received .....

Date Rec'd .....

Check No. 181

Invoice No. Oct 25

## EXHIBIT NO. P-22-F.

November 3rd and 4th, 1922

To expenses at hearing of bankruptcy action at Wilmington, Delaware with Mr. Smith, Mr. Lane, Mr. Watson, Mr. Mashek, Mr. Rodgers and Mr. Montrecelli

Railroad fares, hotel expense, etc. \$90.00

~~Balance due from A. L. Kirby~~ ~~28.03~~

Dec 7th Cash 38.03

Nov 16th " 71.97

---

\$110.00

Approved .....

Received .....

Date Rec'd .....

Check No. 237

Invoice No. Nov. 1/22



This Check is Issued in Full Payment of Items Herein. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

	200—
Less Discount	
Net Amount of Check	200—
Checked and Approved by	

No. 181

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

In Equity  
Newark, N. J. Oct 25 1922

Pay to the  
order of Cash \$200.00/100  
Two hundred dollars Dollars

BURNITE COAL BRIQUETTE Co.

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

Receivers

(Endorsed.)

L. Dreier

Merchants & Manufacturers Nat'l Bank  
Teller

Oct 25 1922

1

Newark, N. J.

Report of Special Master

525

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Expenses to	
Delaware	200—
Less Discount	
Net Amount of Check	200—
Checked and Approved by	

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

No. 237

Newark, N. J. Nov 3 1921

In Equity  
Pay to the  
order of Cash  
Two hundred dollars

\$200.00/100

Dollars

BURNSIDE COAL BRIQUETTE Co.

To the  
A. L. Kirby and John P. Duffy

Receivers

MERCHANTS AND  
MANUFACTURERS

NATIONAL BANK

55 - 7 Newark, N. J.

(Endorsed.)

L Dreier

Merchants & Manufacturers Nat'l Bank

Teller

1

Nov 3 1922

Newark, N. J.

EXHIBIT NO. P-22-H.

—  
THERESE CROSS BERGEN

Official Stenographer

U. S. District Court

~~75~~ Montgomery Street

P. O. Building, Newark, N. J.

Telephones

1225 Montgomery

2615 Bergen

~~Jersey City, N. J.~~ Dec. 8, 1922

Joseph L. Smith Esq.

to

Therese Cross Bergen

---

To app. fee of Mr. Bernstein (Motion Day U S  
Court) Riggs vs Burnrite Coal Briquette \$10.00  
(In lead pencil) Kirby 3

Approved .....

Received .....

Date Rec'd .....

Check No. 354

Invoice No. Dec 12 '22

Report of Special Master

No. 354

In the U. S. District Court,  
District of New Jersey,

in the matter of  
Newark, N. J. Dec. 11 1922

This check is based on full payment of loan  
amount. Endorsement shown by check or  
agent in acknowledgment and receipt of full  
payment. No other receipt is required in this  
case. Return at once with explanation.

In Equity

Pay to the

order of Therese Cross Bergen

Ten dollars

\$10.00/100

Dollars

BERNARD COAL BRACKETT CO.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

33-7 Newark, N. J.

Approved by

(Endorsed.)

Therese Cross Bergen

Harry Bernstein

167 Pay to Any Bank, Banker or 167

Trust Company, or Order

Dec 14 1922

Pay Any Bank, Banker or Trust Co.

or order

Federal Reserve Bank

Dec 15 1922

1-120 of New York 1-120

Prior Endorsements Guaranteed

Prior Endorsements Guaranteed

Irving National Bank of New York

C. V. Allcott, Cashier 516

EXHIBIT NO. P-22-1.

BURNRITE COAL BRIQUETTE CO.

Manufacturers of

Anthracite Coal Briquettes

The Perfect Fuel for Furnace, Range and Grate

New Jersey Railroad Ave., Alpine and Earl Sts.

Newark, N. J.

(Cut)

Burnrite

Briquettes

Burn Right

Telephone Waverly 0800

Smith & Slingerland

Nov 1st

55.00

Dec 1st

55.00

---

\$110.00

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of  
Newark, N. J. Dec. 1 1922

No. 303

In Equity  
Pay to the  
order of Smith & Slingerland  
Twelve hundred eighty-three dollars forty-nine  
cents

Dollars  
BURNETTE COAL BRIQUETTE Co.  
A. L. Kirby and John P. Duffy  
Receivers

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

This Check is Issued in Full Payment of Items  
Herein. Endorsement Hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

Balance of  
Mortgage  
Court Charges and  
Int to date

1283.49

Less Discount

Net Amount of Check

Checked  
and  
Approved by

(Endorsed.)

Smith & Slingerland  
For Deposit  
Smith & Slingerland  
Trust A/c

Received Payment  
Through the Newark Clearing House  
Prior Endorsements Guaranteed  
Dec 5 1922  
Fidelity Union Trust Co. No. 5

# Report of Special Master

531

No. 226

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
in the matter of

Newark, N. J. Nov 1 1922

In Equity  
Pay to the  
order of Smith & Slingerland \$1277.10/100  
Twelve hundred seventy-seven dollars & ten  
cents Dollars

BURNITE COAL BRIQUETTE CO.  
A. L. Kirby and John P. Duffy  
Receivers

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

This check is issued in full payment of items  
herein, Endorsement hereon, by Payee or  
Agent is Acknowledgment and Receipt in Full  
Thereof. No Other Receipt is Required. If Not  
Correct, Return at Once With Explanation.

One-half of mortgage Int from Mar. 1 to Nov 1st Cost of foreclosure suit	1277.10
2350.00	
74.20	
<hr/> 2554.20	

Less Discount

Net Amount of Check

Checked  
and

Approved by

*Report of Special Master*

(Endorsed)

Smith & Slingerland  
 For Deposit  
 Smith & Slingerland  
 Trust A/c

Received Payment  
 Through the Newark Clearing House  
 Prior Endorsements Guaranteed  
 Nov 3 1922  
 Fidelity Union Trust Co. No. 5

---

 EXHIBIT NO. P-22-J.
 

---

UNITED STATES DISTRICT COURT,  
 DISTRICT OF NEW JERSEY.

---

EDWARD G. RIGGS,	} In Equity.
Complainant,	
and	
BURNRITE COAL BRIQUETTE COMPANY,	} ORDER.
Defendant.	

---

This matter being opened to the court by Merritt Lane and Joseph L. Smith, of counsel with the receivers; and upon reading and filing the petition herein praying for payment on account of fees as counsel for the receivers;

February

It is, on this 2 day of ~~January~~, 1923, ORDERED, that there be allowed to Merritt Lane, on account of fees as counsel for the receivers the sum of One Thousand Dollars and to Joseph L. Smith, on account of fees as



counsel for the receivers the sum of One Thousand Dollars and that the receivers do forthwith pay the respective sums.

CHARLES F. LYNCH,  
*J.*

A true copy.

GEORGE T. CRANMER,  
*Clerk.*

Per W. B. REILLY,  
*Deputy.*

(Seal)

Approved .....  
Received .....  
Date Rec'd .....  
Check No. 558 & 558½  
Invoice No. ....

(On Back.)

(United States District Court, District of New Jersey.  
Edward G. Riggs, Complainant, and Burnrite  
Coal Briquette Company, Defendant. In Equity.  
Order.)

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Less Discount

Net Amount of Check

Checked  
and  
Approved by

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
In the matter of

Newark, N. J. Feb. 2 1923

IN EQUITY

Pay to the  
Order of Joseph L. Smith  
One Thousand and 00/100

\$1000 00/100  
Dollars

BURNITE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy  
Receivers

To the

MERCHANTS AND  
MANUFACTURERS

NATIONAL BANK  
55 - 7 NEWARK, N. J.

(Endorsed.)  
For deposit to the  
Order of  
JOSEPH L. SMITH

Received Payment  
Through the Newark Clearing House  
Prior Endorsements Guaranteed  
Feb 2 1923  
Federal Trust Company No. 6

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent, is Acknowledgment and Receipt of Full Thereof. No Other Receipt Required. If Not Correct, Return at Once With Explanation.

Less Discount

Net Amount of Check

Checked

and

Approved by

(Endorsed)

Pay to Order of  
Fidelity Union Trust  
New York

No. 527

IN THE U. S. DISTRICT COURT,  
District of New Jersey,

In the matter of  
Newark, N. J. Feb. 2 1923

IN EQUITY

Pay to the

Order of Merritt Lane

\$1000 00/100

One Thousand and 00/100

Dollars

BURNETTE COAL BRIQUETTE Co.

To the A. L. Kirby and John P. Duffy

Receivers

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55-7 NEWARK, N. J.

Received Payment

Through the Newark Clearing House

Prior Endorsements Guaranteed

Feb 3 1923

Fidelity Union Trust Co. No. 5

Report of Special Master

535

## EXHIBIT NO. P-22-K.

---

JOSEPH L. SMITH  
Counsellor at Law  
Prudential Building, 763 Broad Street  
Newark, N. J.

---

Telephone Mitchell 1180

James I. Bowers  
John H. Pursel

---

February 15, 1923

A. L. Kirby & John P. Duffy, Esqrs.,  
Receivers Burnrite Coal Briquette Co.,

—to—

Joseph L. Smith, Dr.

---

To disbursements in the above matter, \$130.81

Received payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 593.....

This Check is Issued in Full Payment of Items Herein Endorsed. Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice  
Feb 15th 130 81

Less Discount

Net Amount of Check

Checked  
and  
Approved by

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
In the matter of

IN EQUITY  
Newark, N. J. Mar. 7 1923

Pay to the  
Order of Jos. L. Smith \$130 81/100  
One Hundred Thirty Dollars Eighty One Cents

Dollars  
BURNETTE COAL BRIQUETTE Co.

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 NEWARK, N. J.

A. L. Kirby and John P. Duffy  
Receivers

Report of Special Master

(Endorsed)  
For Deposit to the Order of  
JOSEPH L. SMITH  
Received Payment  
Through the Newark Clearing House  
Prior Endorsements Guaranteed  
Mar 8 1923  
Federal Trust Company No. 6

## EXHIBIT NO. P-22-M.

Telephone 6119 Market

April 23, 1923.

Mr. Merritt Lane,

Prudential Building — Newark, N. J.

To ARTHUR W. CROSS, Dr.

Law Printer

243 Market Street, Newark, N. J.

Law Cases

Law Briefs

Legal Notices

Office Stationery

Engraved or Printed

50 Copies — Brief —

Burnrite Coal Briquette Company  
 vs. Edward G. Riggs and others,  
 as Receivers &c.

\$ 94.30

30 Copies — Supplement to State of Case —

In above case.

12.15

---

\$ 106.45

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 776.....

This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon, by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Invoice	April 25	106 45
Less Discount		
Net Amount of Check		
Checked and Approved by		

(Endorsed)  
ARTHUR W. CROSS

Received Payment  
Through the Newark Clearing House  
Prior Indorsements Guaranteed  
May 9 1923  
National Newark & Essex Banking Co. No.

IN THE U. S. DISTRICT COURT,  
District of New Jersey,  
In the matter of

IN EQUITY  
Pay to the  
Order of Arthur W. Cross \$106 45/100  
One Hundred Six Dollars Forty Five Cents Dollars  
BURRITT COAL BRIQUETTE CO.  
To the A. L. Kirby and John P. Duffy Receivers  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 NEWARK, N. J.

Pay to the Order of  
Any Bank, Banker or Trust Co.  
Prior Endorsements Guaranteed  
May 9 1923  
Natl. Newark & Essex Banking Co.  
55-1 Newark N. J. 55-1

EXHIBIT NO. P-22-O.  

---

Telephone 6119 Market

September 10, 1923.

Mr. Merritt Lane,  
Prudential Building, Newark, N. J.  
To ARTHUR W. CROSS, Dr.  
Law Printer  
57 Lafayette Street, Newark, N. J.

Law Cases

Law Briefs

Legal Notices

Office Stationery

Engraved or Printed

---

---

30 copies, Petition for Re-hearing —

Burnrite Coal Briquette Company

vs

Edward G. Riggs, Alfred L. Kirby, et als.,  
Receivers of the Burnrite Coal Briquette  
Co.

\$ 18.00

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 1008.....



This Check is issued as full Payment of Items or Interests, Endorsements, Interest, by *Payee* or Agent or Authorizations and Receipt in Full therefor. No other Receipt is Required. If Not correct, Return at Once With Explanation.

Invoice

9/14/23

18 00

Less Discount

Net Amount of Check

Checked

and

Approved by

(Endorsed)

ARTHUR W. CROSS

Received Payment

Through the Newark Cheating House

Prior Indorsements Guaranteed

Sep 19 1923

Seal, Newark & Essex Banking Co. No.

EX 1919, U. S. DISTRICT COURT,  
District of New Jersey.

In the matter of

Newark, N. J. Sept. 14 1923

IN EQUITY

Pay to the

Order of Arthur W. Cross

Eighteen Dollars

18 00

Dollars

BENNETT COAL BETTETTE CO.

A. L. Kirby and John P. Duffy

Receivers

MERCHANTS AND

MANUFACTURERS

NATURAL BANK

55-7 NEWARK, N. J.

Pay to the Order of

Any Bank, Banker or Trust Co.

Prior Endorsements Guaranteed

Sep 19 1923

National Newark & Essex Banking Co.

55-1 Newark N. J.

Report of Special Master

341

No. 925

## EXHIBIT NO. P-22-P.

2443

NICHOLAS W. BINDSEIL,

Counsellor at Law,

Prudential Building—765 Broad St.

Newark, N. J.

September 5th, 1923.

Mr. Merritt Lane,  
Prudential Building,  
Newark, N. J.

To:

Nicholas W. Bindseil, Dr.

Re: Barnrite Coal Briquette Co., Bankrupt.

1923,

Sept. 5, To original of affidavit of	
Alfred L. Kirby, 86 fol. @ 20¢	917.20
To four carbon copies,	
344 fol. @ 10¢	34.40
To original of affidavit of	
Louise Dwyer, 12 fol. @ 20¢	2.40
To four carbon copies of same,	
48 fol. @ 10¢	4.80
	<hr/>
	\$58.90

Received payment,

Approved .....  
 Received .....  
 Date Rec'd .....  
 Check No. ....  
 Invoice No. 1015 .....

There is much to be learned by full deployment of human resources. A different approach, by 2000 or beyond, in which humans and computers will be integrated. The entire focus in computing is now toward human-computer integration.

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33

## Free Newsletter

Not Reported on a Book

(continued)

1000

colloquially

(F. J. J. J. J.)

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2
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# James W. Kroll

Received 1 August 1991

Through the ~~work~~ Testing

## Prior Indefinite Guarantees

三三三

First National Bank & Trust Co.

1. The first step is to identify the problem.
 2. The second step is to define the problem.
 3. The third step is to analyze the problem.
 4. The fourth step is to develop a solution.
 5. The fifth step is to implement the solution.
 6. The sixth step is to evaluate the solution.
 7. The seventh step is to monitor the solution.
 8. The eighth step is to maintain the solution.
 9. The ninth step is to improve the solution.
 10. The tenth step is to document the solution.

in the matter of

### In Equity

Pay to the

Order of Nicholas W. Mikoyan

Twenty-eight dollars eighty cents

Resolute Coal Barge Co.

A. L. Kirby and John P. Duffy

## Survivors

Musta Asia

Manufacturers

Karnal Basu

© 1999 by The McGraw-Hill Companies, Inc.

day to the order of

Any Bank, Banker or Trust Co.

**Prior Fulfillments Guaranteed**

Sep 21 1923

National Newark &amp; Essex Banking Co.

Newark

1.

131

14

## EXHIBIT NO. P-22-R.

---

MERRITT LANE  
Counsellor at Law  
Prudential Building  
Newark, N. J.

---

Phone Market 3100

December 1st, 1922

To disbursements, etc. in re matter of Burnrite  
Coal Briquette Co. .... \$229.76

## Received Payment,

Approved .....  
Received .....  
Date Rec'd .....  
Check No. ....  
Invoice No. 1123 .....

This Check is Issued in Full Payment of Items Here-with. Endorsement Required by Payee, or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Disbursements 229.76

Less Discount

Net Amount of Check

Checked and Approved by

(Endorsed.)

Pay to order of  
Fidelity Union Trust Co.  
Newark

IN THE U. S. DISTRICT COURT,  
District of New Jersey  
in the matter of  
In Equity

Pay to the  
order of Merritt Lane  
Two hundred twenty-nine Dollars seventy-six cents

BURNITE COAL BRIQUETTE Co.

To the  
MERCHANTS AND  
MANUFACTURERS  
NATIONAL BANK  
55 - 7 Newark, N. J.

Receivers

No. 1074

Newark, N. J. Nov. 30, 1923

\$229 76/100

Dollars

Report of Special Master

Received Payment  
Through the Newark Clearing House  
Dec 15 1923

Prior Indorsements Guaranteed  
—No. 5—

Fidelity Union Trust Co.

## EXHIBIT NO. P-22-S.

JOSEPH L. SMITH

Counsellor at Law

Prudential Building, 763 Broad Street

Newark, N. J.

Telephone Mitchell 1180

James I. Bowers

John H. Pursel

November 30, 1923

A. L. Kirby &amp; John P. Duffy,

Receivers Burnrite Coal Briquette Co.

—to—

Joseph L. Smith, Dr.

---

1923			
Mar.	21	Copies of rules	\$2.00
Aug.	1	Fare	.16
	13	Copy of opinion	2.60
Sept.	7	Fare	.40
	19	Chancery costs	4.07
	21	Fare	.65
Oct.	1	Fare	.40
		Telephone calls to October 1st	5.98
	25	Fare and certificate	.85
			<hr/>
			\$17.11

Received payment,

JOSEPH L. SMITH

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 1124 .....

This Check is Issued in Full Payment of Items  
 Herewith. Endorsement Hereon, by Payee or  
 Agent is Acknowledgment and Receipt in Full  
 Thereof. No Other Receipt is Required. If Not  
 Correct, Return at Once With Explanation.

Less Discount

Net Amount of Check

Checked

and

Approved by

IN THE U. S. DISTRICT COURT,  
 District of New Jersey

in the matter of

In Equity

Pay to the

order of Joseph L. Smith

Seventeen dollars eleven cents

\$17 11/100

Dollars

BURNBITE COAL BRIQUETTE Co.

A. L. Kirby and John P. Duffy

Receivers

To the

MERCHANTS AND

MANUFACTURERS

NATIONAL BANK

55 - 7 Newark, N. J.

(Endorsed.)

For deposit to the order of

JOSEPH L. SMITH

(In circle.)

Proof Number

2

Nov 30 1923

Report of Special Master

547

No. 1072

Newark, N. J. Nov. 28 1923

## EXHIBIT NO. P-22-T.

Room 1010 Chamber of Commerce  
Building, Newark, New Jersey

January 21st, 1924.

To  
Mr. Joseph L. Smith,  
763 Broad Street,  
Newark, New Jersey,

to

Marion W. Ogden

For one copy of Judge Lynch's opinion in the  
matter of Edward G. Riggs vs. The Burnrite  
Coal Briquet Company,

12 folios @ 10¢ a folio

\$1.20

Received payment

(In lead pencil.)

Mr. Kirby

Please pay this  
at once.

1-22-24 JLS

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 19 .....



This Check is Issued in Full Payment of Items Herewith. Endorsement Hereon by Payee or Agent is Acknowledgment and Receipt in Full Thereof. No Other Receipt is Required. If Not Correct, Return at Once With Explanation.

Less Discount

Net Amount of Check

Checked  
and  
Approved by

(Endorsed.)

MARION W. OGDEN

(Stamped: Federal Trust Co., Newark, N. J. Feb. W-9-S 1924)

IN THE U. S. DISTRICT COURT,

No. 1119

District of New Jersey

in the matter of

In Equity

Newark, N. J. Jan 31 1924

Pay to the

order of Marion W. Ogden

\$1.20 100

One dollar twenty cents

Dollars

BURNSIDE COAL BRIQUETTE Co.

To the

A. L. Kirby and John P. Duffy

MERCHANTS AND

Receivers

MANUFACTURERS

NATIONAL BANK

55 - 7 Newark, N. J.

Received Payment

Through the Newark Clearing House

Prior Indorsements Guaranteed

Feb 9 1924

Federal Trust Company

Newark, N. J. No. 6

EXHIBIT NO. P-22-V.  

---

B-6-12-20 5 M B

Newark, N. J., February 6th, 1923.

A. L. Kirby and J. P. Duffy, Receivers,  
Burnrite Coal Briquette Co., N. J. R. R. Ave.,

Newark, N. J.

To FIDELITY UNION TRUST COMPANY DR.

Trust Department.

Make checks payable to the  
Order of the CompanyPart of annual fee (\$1.50.) as Trustee under the  
Mortgage and as Registrar of bonds for year  
ending February 23, 1923, from May 11, 1922 \$112.50

Amount due	\$317.79
Earned since Receiver-	
ship	112.50
	<hr/>
Claim vs Receivers	\$205.29

Approved .....

Received .....

Date Rec'd .....

Check No. ....

Invoice No. 587 .....

EXCEPTIONS TO REPORT OF SPECIAL MASTER AND TO ACCOUNT AS STATED BY HIM.

(Filed July 11, 1924.)

Burnrite Coal Briquette Company, the above entitled defendant, excepts to the report of Charles M. Mason, Special Master, dated the first day of July, 1924, and to the account of Alfred L. Kirby and John P. Duffy, receivers of Burnrite Coal Briquette Company, as stated by the said Special Master, as follows:

A.

EXCEPTIONS TO REPORT OF SPECIAL MASTER.

1. They except to so much of the said report as deals with exceptions heretofore filed by the defendant to the account of the receivers as originally filed, for that the order of reference of February 21, 1924, did not refer to the Special Master the said exceptions heretofore filed by the defendant.

2. They except to so much of the said report as finds that the receivers' account as originally filed is sufficiently specific and properly itemized, for that the Special Master should have found and reported that the receivers' account as originally filed was not sufficiently itemized to enable the defendant or the Court to ascertain whether the disbursements claimed to have been made by the receivers, were such disbursements as are legally justifiable, it now appearing from the report the account as stated by the Special Master, and the testimony taken on the reference and exhibits offered in evidence before the Special Master, that the failure of the receivers properly to itemize their account as originally filed made the reference necessary.

3. They except to so much of the said report as finds that the receivers properly failed to submit

vouchers with their account as originally filed, for that the Special Master should have reported that without the production of the vouchers and the taking of the testimony pursuant to the order of reference, it was impossible for the defendant, or the Court, to know whether the disbursements claimed by the receivers to have been made were, in fact, made, and whether the disbursements actually made were such disbursements as are legally justifiable.

4. They except to so much of the said report as finds that that part of the receivers' account headed "Analysis of Cash Receipts for period May 11, 1922 to January 31, 1924" is not insufficient, for that the Special Master should have reported that without the taking of the testimony pursuant to the reference and an examination of the exhibits produced thereon, it was impossible to ascertain from the account as originally filed the sources of the cash receipts and the dates of receipts, all of which are necessary in order to show whether or not the accounts are true in fact.

5. They except to so much of the said report as finds that that part of the receivers' account as originally filed entitled "Analysis of Cash Disbursements for the period May 11, 1922 to January 31, 1924, by expense classification," is not insufficient, for that the Special Master should have found and reported that the said account as originally filed was insufficient to enable the defendant or the Court to ascertain whether the disbursements claimed to have been made were actually made, and whether the disbursements actually made were such disbursements as are legally justifiable, it now appearing that the failure of the receivers properly to itemize their cash disbursements in their account as originally filed, made necessary this reference, and the restating of the account as restated in the schedules annexed to the Special Master's report.

6. They except to so much of the said report as finds and reports that the account of the receivers as originally filed is true and correct, for that the Special Master should have found and reported that the account as originally filed was insufficiently itemized and necessitated the reference, the taking of testimony, examination of the books and of the receivers, pursuant to the said reference.

It is not intended by this exception to question the correctness in fact of the receivers' accounts as shown by the testimony and exhibits produced on the reference.

7. They except to so much of the said report as finds that the disbursements made by the receivers were made so that the plant might be continued in operation and under the supervision and advice of the Mashek Engineering Co., for that many of the disbursements made by the receivers have no connection with the operation of the plant, and were not made under the supervision and advice of the Mashek Engineering Co., as will more particularly appear from the exceptions hereinbelow made of the account of the receivers, as stated by the said Special Master, and, further, for that there is no evidence from which the Special Master could find that any of the disbursements were made so that the plant might be continued in operation.

8. They except to so much of the said report as finds that the operation and conduct of the business of the defendant under the receivers has resulted in benefit and profit to the stockholders and creditors, for that the said finding and report is beyond the scope of the order of reference; and, further, for that the said report does not show in any respect, or in any manner whatsoever, either in Exhibit 1 of April 11, 1924, or anywhere else, how, or in what respect, the

receivership has resulted in benefit or profit to the stockholders or creditors of the defendant in any amount; and, further, for that there is no evidence before the Special Master from which he could find that the operation and conduct of the business by the receivers has resulted in any benefit or profit to the stockholders or creditors of the defendant.

9. The defendant excepts to the said report insofar as the same fails to take and state the account of the said receivers, as required by the said order, and as not waived by counsel for the defendant. In order to make the extent of this waiver clear, we quote the waiver of counsel for the defendant, referred to by the Special Master in his report, which waiver is as follows:

"May 17, 1924.

Re: BUENRITE COAL BRIQUETTE RECEIVERSHIP

Charles M. Mason, Esquire,  
Essex Building,  
Newark, New Jersey.

Dear Sir:

Supplementing prior communications from me to you in this connection, I beg to state that although we feel that the accounting receivers have not accounted properly, insofar as their account does not enter each item of receipt and disbursement as is customary, for example, in accounts of executors, nevertheless, in order to expedite your report, we shall not take the position that you have not discharged your duty in stating the account so long as the account as stated by you is itemized to the extent hereinafter set forth.

AS TO DEBITS.

The item 'Entries renewal of certificates by Bank, \$48,150.' should be itemized and explained so that there shall appear the total amount actually received on certificates, showing what are

*Exceptions to Report of Special Master* 505

renewals, and what are additional or new borrowings.

As to Claims.

The various items under the heads of "Analysis of cash disbursements" and "Analysis of accounts payable" should all be itemized as itemized by the receivers in their several statements, Exhibits P-20 to P-26, inclusive.

In addition, the following items should be itemized so as to set forth each separate voucher:

Auditing and investigation,	\$2551.96 (P-20)
Bond and insurance	5268.96
Legal and professional expenses	3400.07.

I am sending a copy of this letter to Mr. Smith.

Yours respectfully,

(Signed) G. W. C. McCowan

The various items under the heads of "Analysis of Cash Disbursements" and "Analysis of Accounts Payable" mentioned in the aforesaid letter as being required to be stated as in Exhibits P-20 to P-26, inclusive, are as follows, the same being copies of Exhibits P-20 to P-26, inclusive:

"ANALYSIS OF CASH DISBURSEMENTS"

At January 31, 1924.

Item, Auditing & Investigation amount \$2,551.96

Itemized and Bills Attached Hereby.

Total Amount of Bills Attached 2,551.96

Bills dated prior to January 13, 1923,  
amount 2,268.96

Bills dated prior to Aug. 11, 1923,  
amount 282.00

---

2551.96

Exhibit P-20

3-22-24

Burnside Coal Co.

336 *Exposition to Report of Special Master*

*Accounts of Cash Disbursements.*

*At January 31, 1924.*

Iron—Lanes & Portsmouth. Ex- cessive amount	\$3,400.17
Total amount of bills attached	3,400.17
Bills dated prior to Jan. 13, 1923, amount	550.70
Bills dated prior to Aug. 11, 1923, amount	2,415.41
Bills dated after Aug. 11 & before Oct. 5th, amount	36.00
Bills dated after Oct. 5, 1923, amount	478.06
	<hr/> \$3,400.17
October 1922	
3 22 24	
Barrett Coal Co.	

*Accounts of Cash Disbursements.*

*At January 31, 1924.*

Iron—Boca Norte, Arizona	\$25,700.00
May 3, 1923 Merchants & Mfgs. Natl. Bank	15,000.00
July 18, 1923 Merchants & Mfgs. Natl. Bank	10,000.00
Aug. 2nd, 1923, Mashuk Eng. Co.	700.00
	<hr/> \$25,700.00

It will be noted that in making up our statement, through error we included a trade accept-  
ance given to the Mashuk Eng. Company in  
amount \$700.00, which amount has since been  
paid.

Referring to our statement of Analysis of  
Cash Receipts, we find in checking this over that  
the item "Balance Forward of Certificates by Bank"



# *Exceptions to Report of Special Master* 337

is listed as \$48,150.00, which is an error and should be \$48,750.00. This is simply a typographical error and does not change the total of \$400,249.33.

Exhibit 1<sup>st</sup> 23

3 22 24

Barrick Coal Co.

## ITEMIZED ACCOUNT OF DISBURSEMENTS of \$25,000, BORROWED ON RECEIVER'S CERTIFICATES.

1. Amount of Discount on certificates cash at 75	\$1,250.00
2. Amount of interest actually paid	610.00
3. City taxes	3,230.27
4. Fire insurance	1,055.77
5. Repairs to Roof of building	700.00
6. New equipment and repairs to machinery	

May 1923	1,982.94
June 1923	357.02
July 1923	350.00
Aug. 1923	2,126.33
Sept. 1923	1,569.77
Oct. 1923	3,237.50
Nov. 1923	1,204.33

7. Installation charges,	
May 1923	2,228.12
June 1923	2,276.49
July 1923	1,038.68
Aug. 1923	2,429.39
Oct. 1923	508.57

\$28,286.11

Exhibit 1<sup>st</sup> 24

3 23 24

Barrick Coal Co.

## ANALYSIS OF ACCOUNTS PAYABLE

At January 31, 1924.

Item—Delaware Lawyer \$4,000.

## COPY OF BILL.

Messrs. A. J. Kirby and John P. Duffy,  
 Receivers of the Burnrite Coal Briquette Co.,  
 under appointment of the United States  
 District Court for the District of New  
 Jersey,

—to—

Robert H. Richards and William G. Mahaffy, Dr.

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Re: BURNRITE COAL BRIQUETTE CO. Alleged Bank-  
 rupt, U. S. Dist. Ct., Dist. of Delaware, #431  
 In Bankruptcy.

1923, March 28th To professional  
 services in the above matter, from  
 October 24th, 1922, to date \$4,000.00

Exhibit P-25

3/25/24

Burnrite Coal Co.

## ANALYSIS OF CASH DISBURSEMENTS

AT JANUARY 31, 1924.

Item—Repair Parts, Additions & Im-  
 provements Amount \$32,224.92

## ITEMIZED AND BILLS ATTACHED HERETO.

Total amount of bills attached	33,900.15
Bills dated prior to Jan. 13, 1923, amount	15,473.99
Bills dated prior to Aug. 11, 1923, amount	17,816.83
Bills dated after Aug. 11, 1923, before Oct. 5, amount	476.51
Bills dated after Oct. 5, 1923, amount	132.82
	\$33,900.15

*Exceptions to Report of Special Master* 559

Practically all of the above bills cover machine parts ordered as far back as April and May, 1923, but of course bills were not rendered until the goods were delivered. Nothing was ordered after October 5th, excepting small parts absolutely necessary for the installation of the parts ordered earlier and to be used in upkeep and repair.

Exhibit P-26

3 25, 24

Burnrite Coal Co."

(Excepting Exhibit P-21.)

**B.**

**EXCEPTIONS TO ACCOUNT OF RECEIVERS AS RESTATED  
BY THE SPECIAL MASTER.**

The defendant states that although it is impossible to tell from the account as originally filed whether the disbursements claimed were actually made, the proceedings on the reference before the Special Master have satisfied the defendant that all of the disbursements claimed, and all of the obligations incurred by the receivers were, in fact, made and incurred. The exceptions hereinafter enumerated go to the legal sufficiency of the disbursements as items of discharge or credit to the receivers.

1. They except separately to each of the twenty-four items of disbursement listed on that page of the account headed "Analysis of Cash Disbursements for period May 11, 1922, to January 31, 1924," because no part of such disbursements is legally sufficient as an item of discharge or credit to the receivers, inasmuch as the appointment of the receivers has been set aside for want of jurisdiction, that is to say, to each of the items on that page described as follows:

"Productive Labor  
 Non-Productive Labor  
 Trucking Account  
 Auditing and investigating  
 Bond and insurance  
 Auto Repairs and expense  
 Material  
 Tel. Tel. Office Exp. & Salaries  
 Executive Salaries  
 Petty Cash  
 Oils and Lubricants & Sundries  
 Light, Heat & Power  
 Repair Parts, Additions & Improvements  
 Installation Labor (Own)  
 Tools & Implements  
 Accts. Payable prior to 5/11/22  
 Interest Account  
 Legal & Professional Expenses  
 Bank Notes  
 Deposits Returned  
 Interest on Bonds  
 Demurrage  
 State of Delaware Tax  
 Custodians & Employees May to July, inclu-  
 sive."

2. They except separately to each of the items listed on that page of the account headed "Analysis of Accounts Payable for Period January 31, 1924, by Expense Classification," because no part of such items is legally sufficient as an item of discharge or credit to the receivers, inasmuch as the appointment of the receivers has been set aside for want of jurisdiction, that is to say, to each of the items on that page described as follows:

"Repair Parts, Additions and Improvements  
 Tel. & Tel. Office Expense  
 Insurance  
 Tools and Implements  
 Office Furniture and Fixtures  
 Oils & Lubricants & Sundries

*Exceptions to Report of Special Master* 561

Light, Heat & Power  
 Legal & Professional Exp.  
 Taxes  
 Material  
 Interest Account  
 Demurrage  
 Trucking  
 Advertising  
 Messrs. Mahaffy & Roberts, attorneys for Receivers in Delaware action in Bankruptcy proceedings in Delaware  
 Advance payments for briquettes."

3. They except separately to each of the items of disbursements listed in the itemized statement attached to the said report headed "Analysis of Auditing and Investigating Itemized, to Set Forth Each Separate Invoice and Voucher," because no part of such items is legally sufficient as an item of discharge or credit to the receivers, inasmuch as the appointment of the receivers has been set aside for want of jurisdiction, that is to say, to each of the items on that page described as follows:

"Amount \$2,511.86

<i>Name</i>	<i>Invoice</i>		<i>Voucher</i>
1. Puder & Puder	\$50.00	# 16 Amount	\$250.00
	1003.22	# 11 Amount	250.00
		# 74 Amount	250.00
		# 222 Amount	303.22
	<hr/>		<hr/>
2. J. W. Gurley	\$1053.22		\$1053.22
	168.00	# 544 Amount	\$168.00
	247.00	# 724 Amount	247.00
	<hr/>		<hr/>
3. Sherman Service	\$415.00		\$415.00
4. Wm. S. Mahoffrey	410.54	# 315 Amount	410.54
5. Edward C. Smith	250.00	# 196 Amount	250.00
6. Wm. E. Davenport	134.10	# 204 Amount	134.10
	73.00)		
	51.00)		
	<hr/>		<hr/>
7. Mashek Eng. Company	124.00	# 194 Amount	124.00
	125.00	# 10 Amount	125.00"
	<hr/>		<hr/>

562      *Exceptions to Report of Special Master*

4. They except separately to each of the items listed on that page of the said report headed, "Analysis of Bond and Insurance Itemized to Set Forth Each Invoice and Voucher Separately," because no part of such items is legally sufficient as an item of discharge or credit to the receivers, inasmuch as the appointment of the receivers has been set aside for want of jurisdiction, that is to say, to each of the items on that page described as follows:

"Amount \$5206.90			
<i>Name</i>	<i>Invoice</i>		<i>Voucher</i>
1. T. F. Bryce	\$156.00) 138.04) 98.60)	# 19	\$392.64
	\$392.64		
2. John A. Eckert	\$256.36	# 5	\$256.36
3. T. F. Bryce	106.00) 59.16) 12.50) 98.60)	# 6	\$ 59.16
		# 7	\$307.10
	\$366.26		\$366.26
4. T. C. Moffatt & Co.	\$690.20 98.60		
	\$788.80	# 8	\$788.80
5. National Surety Co.	125.00	# 9	\$125.00
6. T. F. Bryce	49.30) 197.20)		
	\$246.50 675.95) 12.50)	# 15	\$246.50
	\$688.45	# 195	\$688.45
8. G. F. Sommer & Son	63.56	# 345	\$ 63.56
9. Smyth, Sanford & Gerard	905.46	# 384	\$905.46
10. Chas. F. Kraemer	98.60	# 268	98.60
11. Chas. F. Kraemer	98.60	# 509	98.60
12. Thos. F. Bryce	9.35) 111.35)	# 704	120.90
	\$ 2.90		
13. Thos. F. Bryce	394.40 119.00 96.80 335.24 197.20	# 872	\$1000.00 on acct.
14. J. A. Eckert & Co.	256.36	# 989	\$55.77 on account."

*Exceptions to Report of Special Master*      563

5. They except separately to each of the items listed on that page of the said report headed "Analysis of Legal and Professional Expenses Itemized to Set Forth Each Invoice and Voucher Separately," because no part of such items is legally sufficient as an item of discharge or credit to the receivers, inasmuch as the appointment of the receivers has been set aside for want of jurisdiction, that is to say, to each of the items on that page described as follows:

"Amount \$3480.07				
Name	Invoice		Voucher	
1. E. Coons	\$108.00	# 261	\$108.00	
2. " "	65.70	# 787	65.70	
3. " "	18.00	# 924	18.00	
4. " "	131.25	# 1042	131.25	
5. " "	39.90	# 1131	39.90	
6. " "	22.70	# 363	22.70	
7. A. Harris	25.00	# 298	25.00	
8. Kessler & Kessler	50.00	# 285	50.00	
9. A. L. Kirby	102.95)	# 181	200.00	
10. A. L. Kirby	32.05)	# 237	200.00	
11. A. L. Kirby	90.00)			
	225.00		\$400.00	
		Balance of \$175.00 returned to treasury.		
12. T. C. Bergen	10.00	# 354	10.00	
13. Smith & Slingerland	110.00	# 303	1283.49)	
		# 226	1277.10)	
			2560.59	
		Difference paid off mortgage		
14. Joseph L. Smith	1000.00	# 528	1000.00	
15. Merritt Lane	1000.00	# 527	1000.00	
16. Joseph L. Smith	130.81	# 672	130.81	
17. A. W. Cross	106.45	# 788	106.45	
18. A. W. Cross	18.00	# 925	18.00	
19. N. W. Bindseil	58.80	# 930	58.80	
20. Merritt Lane	220.76	# 1074	220.76	
21. Joseph L. Smith	17.11	# 1072	17.11	
22. M. W. Ogden	1.20	# 1119	1.20	
23. Fidelity Union Trust Co.	112.50			Not paid."

6. They except to that part of the account which claims credit for the moneys borrowed on receivers' certificates, because no part of such items is legally

564      *Exceptions to Report of Special Master*

sufficient as an item of discharge or credit to the receivers, inasmuch as the appointment of the receivers has been set aside for want of jurisdiction.

McCARTER & ENGLISH,  
*Solicitors of Defendant.*

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STATE AND DISTRICT OF }  
NEW JERSEY,                } ss.:

Louise Gruhnert, being duly sworn according to law, upon her oath deposes and says:

1. I am a clerk in the office of Messrs. McCarter & English, solicitors of the defendant in this cause.

2. On the tenth day of July, 1924, I served a copy of the within exceptions upon Joseph L. Smith, Esquire, solicitor of the receivers, by leaving the said copy with the person in charge of his office in the Prudential Building, Newark, New Jersey, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of that day.

Sworn to and subscribed }  
before me this 10th } LOUISE GRUHNERT.  
day of July, 1924. }

EDITH S. POWELSON,  
(Seal)                *Notary Public for New Jersey.*

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Service of a copy of the within exceptions is acknowledged this                day of July, 1924.

.....  
*Solicitor of Receivers.*



## DECREE.

(Filed December 19, 1924.)

The above-entitled matter coming on to be heard before the Court in the presence of Merritt Lane and Joseph L. Smith, of counsel with the receivers, and George W. C. McCarter, of counsel with the defendant, and it appearing to the Court that in compliance with previous orders by this Court made the receivers have filed their account, to which exceptions were taken, and that said account was referred for audit to Charles M. Mason, as Special Master, and that said Special Master has filed his report from which it appears that the account filed by the receivers is just and correct, to which report of the Special Master exceptions were filed by the defendant, and said exceptions to the account of the receivers and to the report of the Special Master and the matter of the fixation of receivers' fees and fees for counsel for the receivers, and the matter of the decree to be entered upon the mandate of the Circuit Court of Appeals, by stipulation, now being heard, and the defendant not objecting to the amount of the allowances to the Special Master for his report or to the receivers or to counsel:

It is, on this nineteenth day of December, 1924, ORDERED, ADJUDGED and DECREED, that the account of the receivers and the report of the Special Master herein be and the same is hereby ratified and confirmed, and the items contained in said account and report as disbursements are hereby approved as proper disbursements and as charges against the property in the hands of the receivers, and that the indebtedness of the receivers, as stated in said report and account, not paid, be and the same is hereby adjudged to be a proper lien and charge upon the property now in the control of the receivers belonging to the defendant

corporation, and that the allowances herein made for fees of the Special Master and the receivers and counsel be and the same are hereby adjudged to be proper liens and charges upon the property in the control of the receivers belonging to the defendant corporation.

And it is further ordered that there be allowed to the receivers as and for their full compensation for services rendered as receivers jointly the sum of \$25,000 upon which said sum credit shall be allowed to the extent that the receivers have already received compensation under the orders of this Court, and that there be allowed to Charles M. Mason, Special Master, for his services upon the report the sum of \$500; and that there be allowed to Merritt Lane and Joseph L. Smith jointly as additional compensation for services rendered by them to the receivers the sum of \$10,000.

And it is further ORDERED that the said defendant corporation do pay to the said receivers the amount of the indebtedness of the said receivers as disclosed by their account and report together with the amount herein allowed to the receivers for their compensation, together with the amount allowed to counsel for their compensation and to the Special Master for his services within five days of the date hereof, and that upon such payments being made the said receivers release to the said corporation the assets of the said defendant corporation within their control, executing such proper documents as may be necessary to effectuate such release, and upon such payments being made and release given that the bill be dismissed.

And it is further ORDERED, ADJUDGED and DECREED that if said payments be not made within the time aforesaid then that the property of the defendant corporation within the control of the receivers be sold at such time and under such conditions as this Court may by subsequent order herein direct, upon application to be made to this Court by either party upon five days'

notice to the solicitor of the other, to raise and pay said moneys aforesaid to the receivers, and upon such money being raised and paid what shall remain of the assets of the said corporation shall be paid or delivered to the said defendant corporation less the expenses of sale, and whatever future allowances may be made by this Court to the receivers and counsel, and whatever indebtedness the receivers may be obliged to incur approved by the Court, and that upon the consummation of said sale and the raising and payment of said moneys aforesaid and the payment of whatever balance there may be to the corporation that the bill be dismissed.

And it is further ORDERED that upon the receivers being paid the moneys herein directed to be paid to them they proceed forthwith to pay said moneys to the persons to whom they may be due in accordance with this order, and that upon making such payments and filing a statement with this Court that the same have been made together with receipts of the persons to whom the said moneys may be due the receivers be discharged.

CHARLES F. LYNCH,  
*Judge.*

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ORDER AMENDING DECREE.

(Filed January 5, 1925.)

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A decree on the final account of the receivers having been made herein on the nineteenth day of December, 1924, and application being made by counsel for the defendant,

It is, on this fifth day of January, 1925, ORDERED that the decree aforesaid be amended by adding at the close of the recitals and immediately before the decretal part of the said decree, the following words:

"and counsel for the defendant opposing the making of any allowance, or the making of the inclusion of the receivers a charge against or decreeing the same to be payable out of the property or estate of the defendant in the hands of the receivers, and opposing the allowances to the receivers and counsel as a charge against the property or estate of the defendant in the hands of the receivers, in view of the mandate of the Circuit Court of Appeals."

CHARLES F. LYNCH,

*Judge.*

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STIPULATION.

(Filed January 9, 1925.)

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IT IS STIPULATED AND AGREED that all equity reserved in the orders of this Court made on the twenty-fourth day of January and the twenty-first day of February, 1924, and all questions raised by the account of the receivers, as originally filed, and as restated by the Special Master, and all questions as to allowances, if any, to be made to the receivers and their solicitors, be argued before the Court at the Chamber of Commerce Building, in the City of Newark, on the twelfth day of December, 1924, at ten o'clock in the forenoon.

December 12, 1924.

JOSEPH L. SMITH,

*Solicitor of Receiver.*

McCARTER & EXLISER,

*Solicitors of Defendant.*

ASSIGNMENT OF ERRORS  
(Filed January 12, 1925.)

Now comes the defendant, The Bureau and Biquette Company, a corporation, appellant, and in connection with its petition for appeal says that in the record and proceedings and in the final decree rendered and entered herein on the nineteenth day of December, 1924, as amended by the order rendered and entered herein on the fifth day of January, 1925, said last error has intervened to its prejudice, to wit:

1. The Court erred in its order made and entered on the twenty-fourth day of January, 1924, in not ordering the receivers of the defendant forthwith to turn over the defendant's property to defendant, and in permitting the receivers to hold possession of the defendant's property pending their accounting.

2. The Court erred in its order made and entered on the twenty-fourth day of January, 1924, in not forthwith dismissing the bill of complaint with costs.

3. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in finding that the account filed by the receivers of the defendant is just and correct.

4. The Court erred in disposing in and by its decree made and entered on the nineteenth day of December, 1924, as follows:

"The account of the receivers and the report of the Special Master herein be and the same be hereby settled and confirmed."

5. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not ac-

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6  
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taining the defendant's first exception to the report of the Special Master.

6. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the defendant's second exception to the report of the Special Master.

7. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the defendant's third exception to the report of the Special Master.

8. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the defendant's fourth exception to the report of the Special Master.

9. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the defendant's fifth exception to the report of the Special Master.

10. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the defendant's sixth exception to the report of the Special Master.

11. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the defendant's seventh exception to the report of the Special Master.

12. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the defendant's eighth exception to the report of the Special Master.

13. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the defendant's ninth exception to the report of the Special Master.

14. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the first exception filed by the defendant to the report and account of the receivers as filed by them.

15. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the second exception filed by the defendant to the report and account of the receivers as filed by them.

16. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the third exception filed by the defendant to the report and account of the receivers as filed by them.

17. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the fourth exception filed by the defendant to the report and account of the receivers as filed by them.

18. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the fifth exception filed by the defendant to the report and account of the receivers as filed by them.

19. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the sixth exception filed by the defendant to the report and account of the receivers as filed by them.

20. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the seventh exception filed by the defendant to the report and account of the receivers as filed by them.

21. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the eighth exception filed by the defendant to the report and account of the receivers as filed by them.

22. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the first exception filed by the defendant to the account of the receivers as restated by the Special Master.

23. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the second exception filed by the defendant to the account of the receivers as restated by the Special Master.

24. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the third exception filed by the defendant to the account of the receivers as restated by the Special Master.

25. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the fourth exception filed by the defendant to the account of the receivers as restated by the Special Master.

26. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not



sustaining the fifth exception filed by the defendant to the account of the receivers as restated by the Special Master.

27. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in not sustaining the sixth exception filed by the defendant to the account of the receivers as restated by the Special Master.

28. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

“The items contained in said account and report as disbursements are hereby approved as proper disbursements and as charges against the property in the hands of the receivers.”

29. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

“That the indebtedness of the receivers as stated in said report and account, not paid, be and the same is hereby adjudged to be a proper lien and charge upon the property now in the control of the receivers belonging to the defendant corporation.”

30. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

“That the allowances herein made for fees of the Special Master and the receivers and counsel be and the same are hereby adjudged to be proper liens and charges upon the property in the control of the receivers, belonging to the defendant corporation.”

31. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

“That the said defendant corporation do pay to the said receivers the amount of the indebtedness of the said receivers as disclosed by their account and report together with the amount herein allowed to the receivers for their compensation, together with the amount allowed to counsel for their compensation and to the special master for his services.”

32. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

“That if said payments be not made within the time aforesaid then that the property of the defendant corporation within the control of the receivers be sold at such time and under such conditions as this Court may by subsequent order herein direct, upon application to be made to this court by either party upon five days' notice to the solicitor of the other, to raise and pay said moneys aforesaid to the receivers, and upon such money being raised and paid what shall remain of the assets of the said corporation shall be paid or delivered to the said defendant corporation less the expenses of sale, and whatever future allowances may be made by this court to the receivers and counsel and whatever indebtedness the receivers may be obliged to incur approved by the court, and that upon the consummation of said sale and the raising and payment of said moneys aforesaid and the payment of whatever balance there may be to the corporation that the bill be dismissed.”

33. In and by the decree made and entered on the nineteenth day of December, 1924, the Court erred in not surcharging the receivers with each of the items of disbursement in their account excepted to by the defendant.

34. In and by the decree made and entered on the nineteenth day of December, 1924, the Court erred in not ordering the receivers forthwith to turn over to the defendant all of the property and assets of the defendant in their possession or under their control.

WHEREFORE, the defendant-appellant prays that the decree of the District Court of the United States for the District of New Jersey made and entered on the nineteenth day of December, 1924, as amended by the order made and entered by the said Court on the fifth day of January, 1925, may be reversed, set aside, and for nothing holden.

McCARTER & ENGLISH,  
*Solicitors for Defendant-Appellant.*

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PETITION FOR APPEAL.

(Filed January 12, 1925.)

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*To the Honorable the Judges of the District Court of  
the United States for the District of New Jersey:*

The above-named Burnrite Coal Briquette Company, defendant, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the nineteenth day of December, 1924, as amended by the order made and entered on the fifth day of January, 1925, does hereby appeal from the said decree to the Circuit Court of Appeals for the Third Circuit for the reasons set forth in the assignment of errors filed herewith, and it prays that its appeal be allowed, and that citation be issued, as provided by law, and that the amount of security to be required should be fixed by the order allowing this appeal.

McCARTER & ENGLISH,  
*Solicitors of Defendant.*

Appeal allowed upon giving bond, as required by law for the sum of \$250.

CHARLES F. LYNCH,  
*Judge.*

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CITATION.  
(Filed February 4, 1925.)

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UNITED STATES OF AMERICA, ss.:

To EDWARD G. RIGGS, and ALFRED L. KIRBY and JOHN P.  
DUFFY, as receivers of *The Burnrite Coal Bri-*  
*quette Company,*

(Seal)

GREETING:

YOU ARE HEREBY CITED and admonished to be and appear at the United States Circuit Court of Appeals for the Third Circuit in the city of Philadelphia, within thirty days from the date hereof, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the District of New Jersey, wherein Burnrite Coal Briquette Company is appellant and you are respondents, to show cause, if any, why the decree rendered against the said appellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, THE HONORABLE CHARLES F. LYNCH, Judge of the District Court of the United States for the District of New Jersey, this twelfth day of January, 1925.

CHARLES F. LYNCH,  
*District Judge.*

Service of a copy of the within citation is hereby  
acknowledged this                      day of                      , 1925.

PRÆCIPE FOR RECORD.

(Filed February 18, 1925.)

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The clerk of the court is hereby directed to prepare and certify a transcript of the record in the above entitled cause for use in the Circuit Court of Appeals for the Third Circuit, by including therein the following:

1. Transcript of docket entries.
2. Mandate of the Circuit Court of Appeals.
3. Notice of Motion, filed October 10, 1923.
4. Opinion of Lynch, *J.*, filed January 24, 1924.
5. Order that Receivers Account, filed January 24, 1924.
6. Report and Account of the Receivers.
7. Defendant's Exceptions to Report and Account of Receivers, filed February 14, 1924.
8. Order of Reference to Special Master, filed February 21, 1924.
9. Report of Special Master, Testimony and Exhibits thereunto annexed, filed July 16, 1924.
10. Defendant's Exceptions to Report of Special Master and to Account as stated by him, filed July 21, 1924.
11. Notice filed November 26, 1924.
12. Decree filed December 29, 1924.
13. Order Amending Decree filed January 5, 1925.
14. Stipulation filed January 9, 1925.
15. Petition for Appeal filed January 12, 1925.
16. Assignment of Errors filed January 12, 1925.
17. Citation filed January 12, 1925.

McCARTER & ENGLISH,  
*Solicitors of Defendant-Appellant.*

STATE OF NEW JERSEY, }  
DISTRICT OF NEW JERSEY, } ss.:

LOUISE T. GRUHNERT, being duly sworn according to law, upon her oath deposes and says:

1. I am a clerk in the offices of McCarter & English, solicitors of the appellant in the within entitled cause.

2. On the seventeenth day of February, 1925, I served a copy of the within præcipe on Joseph L. Smith, Esquire, solicitor for the appellee, by leaving same with the person in charge of his office in the Prudential Building in the city of Newark, New Jersey, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon on that day.

Sworn to and sub-  
scribed before me  
this seventeenth day  
of February, A. D.  
1925. } LOUISE T. GRUHNERT.

LEAH M. BAILEY,  
(Seal) *Notary Public of*  
*New Jersey.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE THIRD CIRCUIT.

---

March Term, 1925. No. 3315 (List No. 56).

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*Burnrite Coal Briquette Co.,*

Appellant,

v.

*Edward G. Riggs, et al., Receivers,*

Appellees.

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And afterwards, to wit, on the eighth day of June, 1925, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the twenty-seventh day of July, 1925, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,  
FOR THE THIRD CIRCUIT.

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March Term, 1925. No. 3315.

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*Burnrite Coal Briquette Company, a Corporation,*  
Appellant,

v.

*Edward G. Riggs, Alfred L. Kirby and John P.  
Duffy, as Receivers of the Burnrite Coal Briquette  
Company,*

Appellees.

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ON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES, FOR THE DISTRICT OF NEW JERSEY.

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OPINION.

(Filed June 27, 1925.)

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Before BUFFINGTON, WOOLLEY and DAVIS, *Circuit  
Judges.*

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*Per Curiam.*

On receipt of the mandate of this Court, following its decision that the District Court did not have jurisdiction to appoint receivers for the respondent corporation, 291 Fed. 754, the District Court for the District of New Jersey ordered an accounting by the receivers, referred it, when made, to a master, and on exceptions to the master's report approved their account. It then entered a decree by which it held that the items of the receivers' account, including indebtedness incurred by receivers' certificates and for compensation to the receivers and fees to their counsel, should be paid from funds in their hands, and adjudged



that the items of the account were liens and charges against the corporation's property to be recovered by sale of the property under further orders of the Court, unless within a named period the corporation advance its own funds and pay the indebtedness of the receivership, in which event the Court further ordered that all property of the receivership be delivered and surrendered to the corporation and the receivership proceedings be ended by dismissing the bill. The corporation appealed, assigning several errors, only one of which we shall discuss. This is error charged to the Court in allowing the administrative costs of the receivership in a case in which the Court had no jurisdiction to appoint receivers.

Without doubt the rule of law is, that when a court has appointed receivers of a corporation without jurisdiction to do so, costs and expenses of the receivership are not chargeable against the corporation but must be recovered, if at all, from the plaintiff in the suit. That is the general rule, but, like all rules, it has its exceptions, one of which arises when the corporation has acquiesced in the Court's action. The inner question of this case therefore is whether, on the facts, the corporation acquiesced in the jurisdiction of the Court when it appointed receivers to take over and manage its affairs. We think it did.

We shall not recite the history of these proceedings. We shall merely state that the corporation did not raise the question of the jurisdiction of the Court to appoint the receivers at the time of their appointment or subsequently during a period when the receivers, with the permission of the Court, were borrowing money on receivers' certificates and expending it upon the corporation's property, or during the early part of the time the receivers were operating and improving the corporation's plant, paying tax and mortgage liens and expanding its business. Though vigor-

ously opposing the receivers in other ways, the corporation did not intimate a lack of jurisdiction on the part of the Court to appoint receivers until, months after the appointment, a proceeding for contempt was instituted, which preceded by only a few days the decree from which the first appeal was taken. When the corporation thus stood by and permitted the receivers to do—and the Court to approve—acts which should only have been done by receivers validly appointed, we are satisfied that the corporation's conduct constituted acquiescence within the full meaning of that term, and that, in consequence, the case falls within the exception to the general rule we have stated. *Palmer v. Texas*, 212 U. S. 118, 132, 53 L. Ed. 435, 29 Sup. Ct. 230.

The decree below is affirmed.

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS,  
FOR THE THIRD CIRCUIT.

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March Term, 1925. No. 3315 (List No. 56).

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*Burnrite Coal Briquette Co.,*  
Appellant,  
v.  
*Edward S. Riggs, et al.,*  
Appellees,

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES, FOR THE DISTRICT OF NEW JERSEY.

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ORDER AFFIRMING DECREE.  
(Filed June 30, 1925.)

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This cause came on to be heard on the transcript of record from the District Court of the United States,

for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, June 27, 1925.

VICTOR B. WOOLLEY,  
*Circuit Judge.*

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE THIRD CIRCUIT.

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Original File No. 3315.

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March Term, 1925. No. 56.

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*Burnrite Coal Briquette Company,*  
Appellant,

v.

*Edward S. Riggs, et al.,*  
Appellees.

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MANDATE.  
(Filed July 27, 1925.)

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UNITED STATES OF AMERICA, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,  
*To the Honorable the Judges of the District Court of  
the United States for the District of New Jersey,*

GREETING:

Whereas, lately in the District Court of the United  
States for the District of New Jersey, before you or

some of you, in a cause between Burnrite Coal Briquette Company (defendant below), appellant, and Edward S. Riggs, Alfred L. Kirby and John P. Duffy, receivers of Burnrite Coal Briquette Company (complainants below), appellees, a decree was entered in the said District Court on the nineteenth day of December, 1924, which decree is of record in the office of the clerk of the said District Court, to which reference is hereby made, and the same is hereby expressly made a part hereof as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of an appeal agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

AND WHEREAS, in the present term of March, in the year of our Lord one thousand nine hundred and twenty-five, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record and was argued by counsel:

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs; and that the said appellees, Edward S. Riggs, Alfred L. Kirby and John P. Duffy, receivers of the Burnrite Coal Briquette Co., recover against the said appellant, Burnrite Coal Briquette Co., in the sum of twenty dollars (\$20) for their costs herein expended, and have execution therefor;

Philadelphia, June 27, 1925.

You, therefore, are hereby commanded that such execution and further proceeding be had in said cause,

as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS the HONORABLE WILLIAM HOWARD  
TAFT, Chief Justice of the Supreme Court  
of the United States, at Philadelphia, the  
(Seal) twenty-seventh day of July, in the year  
of our Lord one thousand nine hundred  
and twenty-five (1925).

SAUNDERS LEWIS, JR.,  
*Clerk of the U. S. Circuit Court of  
Appeals, Third Circuit.*

Costs of Edward S. Riggs, *et al.*,  
Clerk, ..... \$.....  
Printing Record, \$.....  
Attorney, ..... \$20.00  

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\$20.00

## CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,  
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.:*  
THIRD JUDICIAL CIRCUIT,

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in this Court in the case of Burnrite Coal Briquette Co., appellant, v. Edward G. Riggs, *et al.*, receivers, appellees, No. 3315, on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this  
(Seal)                      day of                      in the year  
of our Lord one thousand nine hundred  
and twenty-five and of the Independence  
of the United States the one hundred and  
fiftieth.

.....  
*Clerk of the U. S. Circuit Court of  
Appeals, Third Circuit.*

## SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 23, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8554)

Supreme Court,  
FILED

OCT 9 1925

WM. H. STANSE  
CL

IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1925. No.

**227**

**BURNRITE COAL BRIQUETTE COMPANY,**

*Petitioner,*

*v.*

**EDWARD G. RIGGS AND ALFRED L. KIRBY AND JOHN P.  
DUFFY, AS RECEIVERS OF THE BURNRITE COAL BRIQUETTE  
COMPANY,**

*Respondents.*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT**

**AND**

**BRIEF IN SUPPORT THEREOF.**



IN THE  
**Supreme Court of the United States,**

OCTOBER TERM, 1925.

No.

BURNRITE COAL BRIQUETTE COMPANY,  
a corporation,  
Petitioner,

vs.

EDWARD G. RIGGS and ALFRED L. KIRBY  
and JOHN P. DUFFY, as receivers of  
Burnrite Coal Briquette Company,  
Respondents.

} Petition for Certiorari.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED  
STATES:

The petition of BURNRITE COAL BRIQUETTE COMPANY, a  
corporation, respectfully shows:

1. On May 11, 1922, Edward S. Riggs, a citizen and resi-  
dent of the State of New York, filed in the District Court of  
the United States for the District of New Jersey his bill of  
complaint, verified by affidavit, against the petitioner, Burn-  
rite Coal Briquette Company, a corporation of the State of  
Delaware (R., 7). On filing that bill and affidavits, the Court  
*ex parte* appointed Alfred L. Kirby and John P. Duffy tem-  
porary receivers of the petitioner, authorizing them to con-  
duct the business theretofore conducted by your petitioner,  
and authorizing them to borrow not more than Twenty-five  
Thousand Dollars (\$25,000.00) on receivers' certificates, and

requiring your petitioner to show cause why the appointment of receivers should not be continued during the pendency of the suit (R., 19). On May 18, 1922, your petitioner presented its duly verified petition, praying that an order be made directing the receivers to desist and refrain from admitting any person into your petitioner's factory to examine its books, processes or machinery, and to desist and refrain from removing or repairing the property of your petitioner, or incurring any indebtedness or charge against that property, or from disclosing any information secured by them as receivers, and praying that the receivers and the complainant show cause why the receivers should not be discharged (R., 23). On this petition, an order to show cause was made with an *ad interim* restraint (R., 40). Voluminous affidavits were filed on both sides, and both foregoing orders to show cause were duly continued until June 5, 1922, on which date there was filed your petitioner's answer, which, among other things, denied the jurisdiction of the Court (R., 69). After argument, the District Court of the United States for the District of New Jersey, filed an opinion (R., 249), pursuant to which, on July 13, 1922, it made a decree continuing the receivers and the injunctive relief previously granted in the *ex parte* order of May 11, 1922, until final hearing, and added an injunction against your petitioner, its officers and agents, from exercising any of its franchises or privileges (R., 252). No appeal from this order was taken. Your petitioner, through its officers and directors, so far disregarded the assumed jurisdiction of the District Court of the United States for the District of New Jersey, by facilitating an adjudication in bankruptcy pursuant to a petition filed against your petitioner in the District Court of the United States for the District of Delaware, that on October 26, 1922, a petition was filed by the receivers praying that the officers and directors be adjudged in contempt of the District Court of the United States for the District of New Jersey (R., 2). Upon the hearing on the contempt proceedings, the officers and directors urged in the defense of their actions want of

jurisdiction in the Court to make the orders, for the violation of which they were sought to be held in contempt. The time to appeal from the order of July 13, 1922, having expired, the cause was, on November 7, 1922, placed on the calendar for final hearing. On December 1, 1922, notice of a motion to vacate the orders of May 11th and July 13th, 1922, was filed. Your petitioner consenting that final hearing be had on the affidavits previously filed on both sides, final hearing and the hearing on the last mentioned motion was had, upon which the Court, on December 22, 1922, made its final decree, continuing the receivers with all powers theretofore granted, and with all powers conferred upon receivers by an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporation (Revision of 1896)", continued all the injunctive relief previously granted; adjudged that the business of your petitioner had been grossly mismanaged and had been and was being conducted at a great loss, but adjudged that your petitioner was not insolvent (R., 254). From this final decree, an appeal was promptly taken to the Circuit Court of Appeals for the Third Circuit, and the assignments of error thereunder attacked the Court's taking jurisdiction of the suit and making the orders of May 11th and July 13th, 1922, as well as the final decree directly appealed from (R., 256). The Circuit Court of Appeals, after argument, filed its opinion (R., 263) sustaining your petitioner's contention and on August 11, 1923, sent to the District Court its mandate which provided:

"that the decree of the said District Court in this cause be, and the same is hereby reversed with costs, and the cause remanded to the said District Court with instructions to dismiss the bill on the ground that the company in question being a solvent foreign corporation, the Court had no jurisdiction to appoint receivers."

On the coming down of that mandate, the petitioner moved the District Court to comply with the terms thereof and to dismiss the bill, order the receivers to turn over the property forthwith and to account with all convenient speed.

This the Court refused to do, but on January 24th, 1924, made an order (R., 279) which provided, as follows:

"and this Court being of opinion that the receivers should account before the bill be dismissed,

It is, thereupon, on this 24 day of January, 1924, ORDERED that Alfred L. Kirby and John P. Duffy do account to this Court, as receivers of the defendant above named

\* \* \* \* \*

that all further equity abide the order of this Court upon the hearing on the said account and exceptions thereto."

The Receivers filed an account (R., 280) which was in such an unintelligible form that your petitioner filed exceptions thereto (R., 300). On February 21st, 1924, after those exceptions had been filed, the Court made an order referring it to a Master to take and state the account of the receivers, and reserving all further equity until the hearing on the account and the exceptions thereto (R., 304). Hearings were had before the Special Master, and in July, 1924, he filed his report stating the receivers' account and, unvarrentedly, your petitioner contends, passing on the exceptions taken to the account as filed originally by the receivers (R., 423). Exceptions were filed by your petitioner to the Master's report (R., 551). The exceptions to the receivers' account as originally filed, the exceptions to the Master's report, and the equity reserved in the order of January 24, 1924, were all brought on before the District Court of the United States for the District of New Jersey, and that Court, on December 19, 1924, made a decree (R., 565), by which decree the District Court of the United States for the District of New Jersey, ordered, adjudged and decreed, as follows:

"that the account of the receivers and the report of the special master herein be and the same is hereby ratified and confirmed, and the items contained in said account and report as disbursements are hereby approved as proper disbursements and as charges against the prop-

erty in the hands of the receivers, and that the indebtedness of the receivers, as stated in said report and account, not paid, be and the same is hereby adjudged to be a proper lien and charge upon the property now in the control of the receivers belonging to the defendant corporation, and that the allowances herein made for fees of the special master and the receivers and counsel be and the same are hereby adjudged to be proper liens and charges upon the property in the control of the receivers belonging to the defendant corporation."

The decree went on to make allowances to the receivers and their counsel, directed your petitioner to pay to the receivers the amount of their indebtedness as disclosed by their account and report, together with the allowances, within five days, and, upon such payments being made, directing the receivers to release your petitioner's assets to it and that the bill be dismissed, but providing that in default of such payment that the property of your petitioner in the possession of the receivers be sold. From this decree, as modified by an order made January 3, 1924 (R., 567), your petitioner appealed again to the Circuit Court of Appeals for the Third Circuit, assigning for error among other things, the District Court's failure in its order of January 24, 1924, to order the receivers forthwith to turn over your petitioner's property to your petitioner, and in permitting the receivers to hold possession of your petitioner's property pending their accounting, and also the District Court's decreeing, in the decree directly appealed from, that the disbursements of the receivers, their indebtedness, and the allowances, were a proper charge or lien upon the property of your petitioner in the receivers' hands, and ordering a sale of that property to raise the indebtedness and allowances (R., 569). After argument, the Circuit Court of Appeals for the Third Circuit filed a short opinion of affirmance (R., 579), and, on June 27, 1925, made its decree affirming, with costs, the decree of the District Court appealed from, namely, that of December 19, 1924 (R., 582). The mandate went down on July 27, 1925.

2. Your petitioner is advised that the Circuit Court of Appeals for the Third Circuit was in error in affirming the decree of the District Court of the United States for the District of New Jersey last appealed from, but, for the reasons hereinafter stated, should have reversed the same, and your petitioner is further advised, for the reasons hereinafter stated, that this cause is one in which it is proper for this Court to issue a writ of certiorari.

3. On the first appeal, the Circuit Court of Appeals for the Third Circuit held that the District Court of the United States for the District of New Jersey had no jurisdiction to appoint the receivers, and directed the District Court to dismiss the bill on the ground that your petitioner, being a solvent foreign corporation, the District Court had no jurisdiction to appoint receivers. Notwithstanding this adjudication, the Circuit Court of Appeals, by its second decree, which is now sought to be reviewed by this Court, sanctioned the District Court in making the indebtedness of the receivers and allowances to them and their counsel, charges upon your petitioner's property, which the Circuit Court of Appeals had previously adjudged had been seized without jurisdiction. The Circuit Court of Appeals attempts to justify this decision on the ground that your petitioner acquiesced in the District Court's jurisdiction to make the appointment of receivers by the interlocutory orders prior to the final decree directly appealed from. The facts are not at all in dispute. The record is clear as to what your petitioner did and did not do. A brief resumé of that follows:

FIRST: The bill on its face showed that the District Court of the United States for the District of New Jersey was without jurisdiction because neither the plaintiff nor the defendant was a resident of that district. Pursuant to the *ex parte* order made on this void bill, the receivers were appointed and took possession of all of your petitioner's property which they still hold.

**SECOND:** Your petitioner opposed the bill vigorously on the facts, denying the insolvency alleged in the bill as the ground for the appointment of receivers, and, therefore, urging that the District Court should not appoint receivers. Your petitioner's then counsel did not specifically say that the fact that your petitioner was solvent deprived the Court of jurisdiction to appoint receivers, but such counsel then urged want of jurisdiction in the Court on other grounds.

**THIRD:** After argument, the District Court agreed with your petitioner that your petitioner was not then insolvent, but, nevertheless, ruled that the lack of insolvency was no bar to the appointment of receivers, overruled your petitioner's jurisdictional contention and made an order continuing the receivers until final hearing.

**FOURTH:** This order made in midsummer was not itself appealed from, but your petitioner, through its Board of Directors, passed a resolution to facilitate an adjudication of your petitioner's bankruptcy by the Court of its domicile (Delaware), the necessary result of which adjudication would be the removal of your petitioner's property from the hands of the receivers. The passing of this resolution was, undoubtedly, a violation of the terms of the injunctive provisions of the order not so appealed from, and your petitioner's directors opposed the contempt proceedings immediately brought against them, by urging that the District Court was without jurisdiction because your petitioner was solvent and a corporation foreign to the jurisdiction in which the District Court sat. The time to appeal from the afore-said interlocutory order having expired, your petitioner facilitated an early final hearing, at which the District Court made a decree making permanent the appointment of the receivers. This final decree was promptly appealed from, and was reversed with directions to dismiss the bill, on the ground that the District Court had no jurisdiction to appoint receivers. After this decision, the District Court and the

Circuit Court of Appeals both have ordered the tangible property, real and personal, of your petitioner, still in the receivers' hands, to be sold to meet the indebtedness of the receivership and allowances to receivers and counsel, without discrimination as to whether such indebtedness was incurred before or after the appeal.

The error of the District Court and the Circuit Court of Appeals is three-fold:

(a) The so-called acquiescence was an immaterial fact, and the property of your petitioner, having been seized without jurisdiction, must be returned. It cannot be sold to pay expenses of the void receivership.

(b) When the record shows, and the Court finds that the defendant corporation vigorously opposed the appointment of receivers uninterruptedly from first to last, the Court cannot examine into the details of such opposition, and, on any technical ground or reason not negating the fact of continued opposition to the receivership, find such acquiescence by the corporation as would charge it with the expense of the receivership.

(c) When the Court, on examining into the details of such opposition, purports to find acquiescence only for a short time and in interlocutory orders, the Court cannot, on this account, charge the corporation with the indebtedness of the receivership incurred after such acquiescence had admittedly ceased, and after the interlocutory orders had been superseded by a final decree which admittedly was never acquiesced in.

4. This decision of the Circuit Court of Appeals is in conflict with the decisions of other Circuit Courts of Appeals on the same subject.

*Couper vs. Shirley*, 75 Fed. 168 (C. C. A., 9, 1896);  
*Beech vs. Macon, &c., Co.*, 125 Fed. 513 (C. C. A.,  
 5, 1903);



*Chicago, &c., Co. vs. Newman*, 183 Fed. 573 (C. C. A., 7, 1911) ;

*Hawes vs. First National Bank of Madison*, 229 Fed. 51 (C. C. A., 8, 1915) ;

*Frier vs. Weakley*, 261 Fed. 509 (C. C. A., 8, 1919) ;

*Bricton Mfg. Co. vs. Woodrough*, 284 Fed. 484 (C. C. A., 8, 1922).

It is also probably in conflict with the decision of this Court in the case of *Lion Bonding Co. vs. Karatz*, 262 U. S. 640. The Circuit Court of Appeals, by the decree complained of, decides an important question of general law in a way probably untenable and in conflict with the weight of authority. That the question of how far the property of a corporation, seized by a receiver, shall be responsible for the expenses of a receivership, is an important question of general law is obvious. This Court has in the past so held, by issuing its certiorari to Circuit Courts of Appeals to bring up such questions.

See

*Atlantic Trust Co. vs. Chapman*, 208 U. S. 360 ;

*Palmer vs. Texas*, 212 U. S. 118 ;

*Lion Bonding Co. vs. Karatz*, 260 U. S. 640.

To show that the decision of the Circuit Court of Appeals is untenable and in conflict with the weight of authority, your petitioner refers to the brief hereunto annexed. For the same reason the Circuit Court of Appeals, by affirming the decision of the District Court complained of, has so far sanctioned such a departure by the District Court from the accepted and usual course of judicial proceeding as to call for an exercise of this Court's power of supervision.

5. Your petitioner presents herewith, as part of this petition, a brief and a transcript of the record in the Circuit Court of Appeals.

YOUR PETITIONER RESPECTFULLY PRAYS that a writ of certiorari issue out of and under the seal of this Court directed to the Circuit Court of Appeals for the Third Circuit, commanding the said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in this case, which was entitled in that Court, to the end that the said cause will be reviewed and determined by this Court, as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate and that the said judgment of the said Circuit Court of Appeals may be reversed by this Honorable Court.

BURNRITE COAL BRIQUETTE COMPANY

By ROBERT H. McCARTER, and  
G. W. C. McCARTER

Solicitors and Counsel.

IN THE  
SUPREME COURT OF THE UNITED STATES

BURNRITE COAL BRIQUETTE COMPANY,  
a corporation,  
Petitioner,

VS.

EDWARD G. RIGGS and ALFRED L. KIRBY  
and JOHN P. DUFFY, as receivers of  
Burnrite Coal Briquette Company,  
Respondents.

On Petition for  
Certiorari.

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**BRIEF IN SUPPORT OF PETITION.**

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## A.

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**B.**

The opinion of the Circuit Court of Appeals on the first appeal is reported at 291 Fed. 754. The opinions of the District Court and of the Circuit Court of Appeals on the second appeal, namely, the opinion sought to be reviewed have not been reported.

**C.**

1. The judgment to be reviewed was entered June 27, 1925 (R., 582).

2. The making of the said decree of June 27, 1925 (R., 582) is relied on as the basis of this Court's jurisdiction.

3. The statutory provision under which such jurisdiction is invoked is subdivision *a*, Section 240 of the Judicial Code, as amended by Section 1 of an Act of Congress entitled "An Act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court and for other purposes", approved February 13, 1925, 43 Statutes at Large, 936, 938, which reads:

"(a) In any case, civil or criminal, in a circuit court of appeals or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

4. We know of no reported cases under the Act of February 13, 1925, but, among the many cases under pre-existing law, refer to *Atlantic Trust Co. vs. Chapman*, 208 U. S. 360; *Palmer vs. Texas*, 212 U. S. 118, and *Lion Bonding Co. vs. Karatz*, 262 U. S. 640.

**D.**

For a concise statement of the case, we refer to paragraph 1 of the petition for certiorari, hereunto annexed.

**E.**

The assignments of error relied on for this application are:

1. The Court erred in its order made and entered the twenty-fourth day of January, 1924, in not ordering the receivers of the defendant forthwith to turn over the defendant's property to defendant, and in permitting the receivers to hold possession of the defendant's property pending their accounting.

29. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

"That the indebtedness of the receivers as stated in said report and account, not paid, be and the same is hereby adjudged to be a proper lien and charge upon the property now in the control of the receivers belonging to the defendant corporation."

30. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

"That the allowances herein made for fees of the Special Master and the receivers and counsel be and the same are hereby adjudged to be proper liens and charges upon the property in the control of the receivers, belonging to the defendant corporation."

31. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

"That the said defendant corporation do pay to the said receivers the amount of the indebtedness of the said receivers as disclosed by their account and report together with the amount allowed to counsel for their compensation and to the special master for his services."

32. The Court erred in decreeing in and by its decree made and entered on December 19, 1924, as follows:

"That if said payments be not made within the time aforesaid then that the property of the defendant corporation within the control of the receivers be sold at such time and under such conditions as this court may by subsequent order herein direct, upon application to be made to this court by either party upon five days' notice to the solicitor of the other, to raise and pay said moneys aforesaid to the receivers, and upon such money being raised and paid what shall remain of the assets of the said corporation shall be paid or delivered to the said defendant corporation less the expenses of sale, and whatever turne allowances may be made by this court to the receivers and counsel and whatever indebtedness the receivers may be obliged to incur approved by the court, and that upon the consummation of said sale and the raising and payment of said moneys aforesaid and the payment of whatever balance there may be to the corporation that the bill be dismissed."

The "Court" referred to in the assignments of error is, of course, the District Court. Additional assignments of error will be relied on at final hearing should the Court decide to issue its certiorari.

**F.****ARGUMENT.****SUMMARY.****I.**

The Court having no jurisdiction to appoint receivers had no jurisdiction to make the indebtedness of and allowances to the receivers and their counsel charges upon the petitioner's property seized without jurisdiction.

**II.**

When the record shows and the Court finds that the defendant corporation, the petitioner, vigorously opposed the appointment of receivers uninterruptedly from first to last, the Court cannot examine into the details of such opposition, and, on any technical grounds or reason not negating the fact of continued opposition to the receivership, find such acquiescence by the corporation as would charge it with the expenses of the receivership.

1. The facts.
2. The authorities.
3. Authorities relied on by the respondents.
4. The failure to appeal from the order of July 13th, 1922.
5. The alleged delay in intimating lack of jurisdiction.

**III.**

Acquiescence cannot possibly justify indebtedness incurred after the acquiescence ceased.

**IV.**

Refutation of certain arguments that may be advanced by the respondents.



## I.

**The Court having no jurisdiction to appoint receivers had no jurisdiction to make the indebtedness of and allowances to the receivers and their counsel charges upon the petitioner's property seized without jurisdiction.**

The situation cannot be better stated than it was in the opinion of the Circuit Court of Appeals on the first appeal (R., 263) :

"The appointment of receivers for a corporation is a matter of grave concern, because it takes its property, and the management thereof, out of the hands of those in whom the law vested it. It follows, therefore, that when a court exercises this power, its warrant so to do must be shown. Such action, over the protest and objection of the company, the District Court of New Jersey took in the appointment of receivers for the Burnrite Coal Briquette Company, a corporation of the State of Delaware, which Company that Court at the same time found was not insolvent. Such being the case, the basic and controlling question here involved is: Did the District Court of the United States for the District of New Jersey have jurisdiction to appoint receivers for a solvent foreign corporation? In our opinion, it had not, and the reason for so holding is that the law of New Jersey, as interpreted by its highest tribunal, has given no such power over foreign corporations to its own local courts, and the jurisdiction of the Court below was in that particular determined by that of the State courts."

After discussing the New Jersey cases, the Circuit Court of Appeals in their opinion concluded (R., 266) :

"It thus appearing that under the decisions of the highest tribunal of New Jersey, courts of that State had no statutory authority to appoint receivers for a solvent

foreign corporation, it follows the United States District Court of New Jersey had no such authority and should have refused to entertain this bill.

This basic jurisdictional question being determinative of the case, it follows that the terms of the order, which the Court made in a case when the Court had no power to make any order at all, constitute matters to which we need not advert. The case will, therefore, be remanded to the Court below, with instructions to dismiss the bill on the ground that the company in question being a solvent foreign corporation, the Court below had no jurisdiction to appoint receivers."

Pursuant to this opinion, there was made by that Court the decree of August 11, 1923 (R., 267).

The case, therefore, is one in which the District Court had no power to make any order at all. It is in principle, therefore, covered by the decision of this Court in *Lion Bonding Company vs. Karatz*, 262 U. S. 640. In that case, the District Court appointed a receiver and its action was affirmed by the Circuit Court of Appeals. On Certiorari, however, the Supreme Court held that the District was without jurisdiction, ordered a reversal and directed that the bill be dismissed (262 U. S. 77). Before the mandate issued, the receivers applied for modification of the decrees of the Supreme Court. They asked for approval of disbursements or expenses of the receivership, paid by them out of moneys realized from the assets of the corporation. They asked that they and their counsel be paid and that the creditors who filed their claims only in the Federal Court be protected by the order of the Supreme Court on the receiver in the State Court to take proceedings to protect such creditors. In denying the motion Brandeis, J., for the Court said:

"This Court is without power to grant any part of the relief sought. The District Court was without jurisdiction as a federal court to appoint receivers in, or otherwise to entertain, the Karatz suit. For this reason, among others, the Hertz suit, a dependent bill, was dismissed. As the lower federal courts lacked jurisdiction,

they are necessarily without power to make any charge upon, or disposition of, the assets within their respective districts. Even where the court which appoints a receiver had jurisdiction at the time, but loses it, as upon supervening bankruptcy, the first court cannot thereafter make an allowance for his expenses and compensation. He must apply to the bankruptcy court. Where a case is dismissed for want of jurisdiction as a federal court, there is not even power to award costs against the defeated party. The case at bar is unlike *Palmer v. Texas*, 212 U. S. 118, 132, upon which the receivers rely. In that case the costs and expenses of a receiver erroneously appointed by the federal court were directed to be paid out of funds realized in that court. There the Circuit Court had jurisdiction as a federal court; but the decree appointing the receiver was reversed, because it was erroneous.

Obviously, the Court has no power to direct the Department of Trade and Commerce of Nebraska to apply to the state court for the order allowing creditors to prove their claims in that court. Our jurisdiction is limited in this proceeding to the correction of the errors committed by the lower federal courts in taking jurisdiction and in granting relief. The only course open to the creditors, as to the receivers and their counsel, is to apply to the state court."

In the case at bar, at the time of the original appointment, the District Court for New Jersey had no jurisdiction as a federal court, by reason of the non-residence of both parties. That particular jurisdictional defect was cured, but the lack of power to seize the property of the petitioner remained throughout. Jurisdiction is power and power is jurisdiction. Parties cannot confer power on the federal courts where it does not exist. The question of acquiescence, therefore, is wholly immaterial.

## II.

**When the record shows and the court finds that the defendant corporation, the petitioner, vigorously opposed the appointment of receivers uninterruptedly from first to last, the court cannot examine into the details of such opposition, and, on any technical ground or reason not negating the fact of continued opposition to the receivership, find such acquiescence by the corporation as would charge it with the expenses of the receivership.**

### 1.

#### The Facts.

The jurisdiction of the District Court, as a federal court, depended solely upon diversity of citizenship. The bill of complaint, on its face, showed that the plaintiff, Riggs, was a citizen and resident of New York, and the defendant a corporation, and, therefore, a citizen of Delaware (R., 7). On this bill of complaint, which, under Section 813 of the Judicial Code, showed that the Court was without jurisdiction, the Court, *ex parte*, made its order of May 11, 1922 (R., 19), appointed receivers, directed them to conduct the petitioner's business, and authorized them to issue receivers certificates. Unfortunately, the petitioner, instead of appearing specially, presented its petition (R., 23), praying for the discharge of the receivers, and, on this petition, obtained a temporary limitation of their activities. The bill of complaint charged that the petitioner was insolvent. The voluminous affidavits on both sides were directed largely to this question, and the answer filed for the petitioner (R., 69) challenged the jurisdiction of the Court. After argument, the District Court made its order of July 13, 1922 (R., 252). This action was

excellently summarized by the Circuit Court of Appeals in its first opinion (R., 263) as follows:

"Such action, over the protest and objection of the company, the District Court of New Jersey took in the appointment of receivers for the Burnrite Coal Briquette Company, a corporation of the State of Delaware, which Company that Court at the same time found was not insolvent."

Hitherto, there was certainly no acquiescence. The order of July 13th, although appealable, was not appealed from, but the directors of the petitioner so far disregarded it that they were cited for contempt. After the time to appeal had expired, the petitioner facilitated an early final hearing, at which it moved to discharge the orders of May 11th and July 13th, 1922. On the final hearing, the Court made its final decree (R., 254) which was promptly appealed from, under assignments of error challenging all of the action of the Court from beginning to end (R., 256). It was this decree that the Circuit Court of Appeals reversed. After the decree of dismissal and with the mandate directing the District Court to dismiss the bill for want of jurisdiction, that Court, nevertheless, permitted its receivers to hold on to the petitioner's property (which they still hold) and made the indebtedness of the receivership and allowances to the receivers and counsel a charge on that property, which it ordered sold to make the same. The District Court, in so doing, acted directly in the teeth of numerous decisions in the Federal Courts.

## 2.

### The Authorities.

*Couper vs. Shirley*, 75 Fed. 168 (C. C. A., 9, 1896). In this case, the Circuit Court had *ex parte* appointed a receiver in foreclosure, relying upon a stipulation in this mortgage authorizing such appointment. Such appointment, however, was directly prohibited by a statute in Oregon, where the

land lay, so that, upon this being called to the court's attention, the appointment was held to be contrary to public policy, and the receiver was discharged, and ordered to pay over to the defendant all the defendant's money and property in his hands, without deduction for allowances to the receiver or counsel. The receiver appealed from this order, which was affirmed, the court saying at page 171:

"Appellant claims that it was inequitable for the court, after appointing Couper receiver, to dismiss him without making some provision to pay him for his services and for the expenses by him incurred. The answer is that the court had no authority to make the appointment. It was made *ex parte*, without discussion. When the question properly came before the court, the receiver was removed. It may be that some provision ought to have been made for his pay, but it is clear to our minds that, upon the facts presented in this case, the party who improperly procured the appointment of the receiver should have been required—if the receiver was entitled to anything—to pay his expenses and services. Certain it is that the appellees, not being responsible for his appointment, could not be held liable; and, as against them, appellant is not entitled to any relief. The judgment of the circuit court is affirmed, with costs."

*Beech vs. Macon, etc., Co.*, 125 Fed. 513 (C. C. A., 5, 1903). A petition in involuntary bankruptcy was filed against Beech. The petitioning creditors procured *ex parte* the appointment of a receiver, who took possession of live stock, some of which was in the possession of D, who claimed to own it. The court made an order for the sale of the live stock, at which sale D bought in the stock, which she claimed to own, and obtained possession of it. This sale was confirmed by the District Court. On petitions by B and D to superintend and revise the orders appointing the receiver, and confirming the sale, the Circuit Court of Appeals ordered the money returned to D, and that the petitioning creditors pay all costs, including the compensation of the receiver. A mandate to this effect went down. On receipt of that mandate, the District Court directed the petitioning creditors

should pay to B and D the amounts theretofore allowed and paid out by the receiver out of the funds in his hands, the cost of the receivership, including the receiver's compensation, and his expenses, but permitted the receiver to deduct from the fund in his hands the expenses of the receivership in the necessary preservation and keeping of the estate, adjudging that to be a proper charge against the fund. This was the cost of keeping the live stock. B and D then filed a petition with the Circuit Court of Appeals to revise the order of the District Court entered on the mandate. The Circuit Court of Appeals held that the District Court should not have deducted the cost of keeping the live stock, saying on page 515:

"It is a principle of general application that, if the appointment of a receiver is erroneous or void, and the adverse party does not acquiesce in it, but continues to contest it to a successful termination, any compensation which may have accrued to the receiver in the meantime, and his expenses incurred in the administration of the estate, should be taxed to the parties who applied to have the appointment made."

and at page 517:

"If it should be held that, although the defendant succeeded in having reversed and set aside the order appointing the receiver, he was responsible for the expenses of the receiver in buying feed for the stock, the application of such sale, it seems to us, would lead in many cases to the greatest injustice. If the litigation was protracted, and some considerable time elapsed before the order appointing the receiver was vacated the expenses would often more than equal the value of the property."

\* \* \* \* \*

The property having been taken from the defendants against their consent under an erroneous order, which they resisted successfully in an appellate court, the only proper course is to return the property without charge of any kind against it or against the successful defendants. The defendants should be put in their former condition as nearly as possible. Instead of any sum being taxed against the defendants under such circumstances, they would be entitled in some jurisdictions to recover

damages, in a proper action, for being deprived of the use of the property. The petitioners who instituted the proceedings and secured the appointment of a receiver are properly and equitably chargeable with the costs expenses incurred by their wrongful application. In the event of their insolvency, any expenses incurred by the receiver should fall on him, and not on the defendants. He need not become receiver unless he chooses, or he may require a bond of indemnity before accepting the position. In a case, therefore, where the receiver has been wrongfully appointed, and the order subsequently vacated, it would be more equitable that the receiver himself should sustain the loss or expenses of the receivership paid by him than that they should be taxed to the successful defendants.

*Chicago, etc., Co. vs. Newman*, 187 Fed. 573 (C. C. A., 7, 1911). This case was commenced in the state court where a receiver was appointed, and then was removed to the federal court, which dismissed the bill on the ground that the court would not interfere with the internal affairs of a foreign corporation, and ordered the receiver to turn back all property, and to present his account within three days. The receiver sought to obtain compensation for himself and attorney. The court held that the receiver must pay over all to the defendant, and look to the complainant for reimbursements. The receiver appealed, and the Circuit Court of Appeals affirmed the Circuit Court.

*Fryer vs. Weakley*, 261 Fed. 509 (C. C. A., 8, 1919). The court's decision on our point appears from the following quotation of the opinion on page 514:

"The conclusion is that this case falls clearly without the jurisdiction of this court, under the opinion of Judge Carland in *Hawes v. First National Bank*, 229 Fed. 51, 143 C. C. A. 645. The order of the court below appointing the receiver must therefore be reversed, and the case must be remanded to the District Court, with directions to cause all the moneys and property and all the proceeds of the property seized or collected by the receiver to be paid over and delivered to the defendants



W. S. Fryer and G. L. Fryer, and to tax the costs and expenses of the receiver against the plaintiff below. The court, being without jurisdiction, has no property to pay them. As was well said by Judge Carland in the *Hawes* Case: 'Where a receivership is procured illegally, the costs of the receivership may be taxed against the complainant procuring the appointment. \* \* \* Courts may not seize property without jurisdiction, and then claim jurisdiction over the property because it is in the possession of the court.'

*Brietson Mfg. Co. vs. Woodrough, District Judge, 284 Fed. 484 (C. C. A., 8, 1922).* This was a petition by the defendant for a mandamus to the District Judge to comply with the mandate of the Circuit Court of Appeals. The decision appears from the following quotation from the head-note:

"Where appointment of receiver in stockholders' suit was reversed for lack of jurisdiction of the trial court and case remanded with directions that the receiver be required to return all property in his hands to those from whom he received it and that the bill of complaint be dismissed, it was error for the trial court to dismiss the complaint but to order that property in the receiver's hands be impounded in his hands pending further proceedings on an intervention petition: for, where possession of property is acquired, without jurisdiction, such possession will not itself confer jurisdiction, \* \* \*."

A problem somewhat similar to that before this court was before Judge Learned Hand in the case of *In re: Hurlburt Motors, Inc.*, 275 Fed. 62 (1920). In that case, a petition in bankruptcy was filed against the respondents, and a receiver appointed. The respondents unsuccessfully moved to vacate the receivership. The receiver had conducted the business at a profit of some \$2,900, pending the proceedings in which a jury found the respondents solvent. The respondents applied for an order dismissing the petition,

and directing the receiver to turn over the assets. Judge Hand said, at page 63:

"I think that the rule is that the defendant's or respondent's estate is not liable for the receiver's debts or his compensation beyond the amount of the profits realized or improvements arising through profits. \* \* \* As to anything more, the receiver and his creditors have the responsibility only of the plaintiffs or petitioners.

Therefore, if the receiver had in his hands no more than the original value of the property seized, he would be obliged to turn back everything to the respondents and look wholly to the petitioners for his compensation and so would his creditors. The respondents not only did not consent, but actively opposed the seizure; they could not be required to pay the expenses. It appears, however, that the receiver has now in his hands more than the amount of property received by about three thousand dollars. This is obviously not a profit till his debts and his own allowances are paid, and there is no propriety in paying it over to the respondents. True, their own profits might have been as much or more, and, if so, they have recourse against the petitioners for the loss; but as against the receiver and his creditors they must yield. The proper result, if all could be worked out, would be this: The receiver and his creditors should be entitled to the profits, when ascertained, in payment of their claims, and the petitioners should pay any balance; the respondents should be entitled to collect from the petitioners the allowance of their counsel and any profits they could show they have lost by reason of the mistaken seizure.

Unfortunately, this would take time, and meanwhile the respondents would be kept out of their property, which they need at once, if it is to be saved at all. Some present solution must be found, if only provisional. The best which I can devise is this: The receiver's accounts show an estimated profit of \$3,000; they are in evidence and can be referred to. So much of the assets he should be allowed to retain against his debts and his allowances. He will turn over the other assets forthwith to the respondents. Then he will state his accounts to a special master, who will fix his profits, state his unpaid debts, and fix his allowance and that of his attorney.

At the same time the respondents will have the allowance fixed of their counsel, and prove what, if any, profit they have lost during the period of the receivership. When these figures are found, an order may pass directing the petitioners to pay to the respondents their counsel fee and the profit lost by them by reason of the seizure, also to the receiver and his creditors any unpaid balance, the respondents shall be liable to an amount equal to the difference between the profits as found and the sum retained by the receiver."

That case is a stronger one for the receiver than the case at bar, because, on the face of the original papers, the court had jurisdiction to appoint receivers, and, furthermore, because by accounts filed in the cause, a profit in the operation of the business was shown.

*Hawes vs. First National Bank of Madison*, 229 Fed. 51 (C. C. A., 8, 1915). In this case the District Court appointed a receiver but the Circuit Court of Appeals reversed the appointment on the ground that the District Court was without jurisdiction by reason of the absence of an indispensable party. It held that the receiver was illegally appointed, therefore, and reversed the District Court. In disposing of the receiver's contention that the costs of the receivership should be paid out of the property, the Court said, "In the case at bar, the court, being without jurisdiction, has no property with which to pay any one, and hence is not ruled by *Atlantic Trust Co. v. Chapman*, 208 U. S. 360, 28 Sup. Ct. 406, 52 L. Ed. 528, 13 Ann. Cas. 1155. Courts may not seize property without jurisdiction, and then claim jurisdiction over the property because it is in the possession of the court."

A most important decision is *Lion Bonding Company vs. Karatz*, 262 U. S. 640, cited under Point I hereinabove.

### 3.

#### Authorities Relied on by the Respondents.

There are only four cases relied on by the respondents which deserve comment.

*Atlantic Trust Company vs. Chapman*, 208 U. S. 360. In this case, a receiver in foreclosure had been appointed and performed his duties. No attack on the receivership or on the jurisdiction of the Court was made, but the property did not bring sufficient to meet the expenses incurred by the receiver. An attempt was made to charge these expenses against the complainant, which the Circuit Court of Appeals sustained. This Court, on certiorari, reversed the Circuit Court of Appeals. The case, therefore, decided only that the costs of a valid receivership, which realized a deficiency, cannot be charged against the complainant. It decided nothing else.

*Palmer vs. Texas*, 212 U. S. 118. A state court of Texas had appointed a receiver for a corporation, which appealed from the appointment, and made the appeal a supersedeas, so that, pending that appeal, the state receiver relinquished possession. The action in question was then commenced in a federal court in Texas, and a receiver appointed, which appointment was reversed by the Circuit Court of Appeals as erroneous. The case was then brought to the Supreme Court by certiorari, after the Circuit Court of Appeals had assessed the costs of the receivership against the plaintiff. All that appears in the opinion of this Court on the question of costs is the following (p. 132) :

“We think the Circuit Court of Appeals was right in reversing the order of the Circuit Court appointing the receiver. In that court the costs of the receivership were assessed against Palmer, the original complainant. The receivership has gone on pending the proceedings upon appeal and we are of opinion that justice will be done if the costs of the receivership are paid out of the fund realized in the Federal Court, and it is so ordered;  
\* \* \*

In the argument for the petitioners, the following facts appear, however (p. 120) :

“The Court of Appeals was also wrong in directing that the costs of the receivership be taxed against the complainant. That was a question between the parties to

the suit, and was not involved in the appeal of the State of Texas and Eckhardt from the orders refusing their application, and the materials necessary for determining how the costs of the receivership should be borne were not before the court. Those costs were not part of the costs of the appeal. By the effect of the supersedeas, the property and business of the company remained in its hands in the same manner as if there had been no judgment or order of the state court. The expenses of the receivership were a part of the expenses of carrying on the business, and should be dealt with accordingly. If the State should ever be in a position to call for an account of the business of the company during the pendency of the appeal in the state courts, the question how the expenses of the receivership should be borne may arise. But it does not arise upon the appeal in this case, and the expenses ought not to be saddled on the plaintiff without an inquiry."

Among the differences between *Palmer vs. Texas* and this case, are the following:

In that case, the receivership was erroneous. In this case, the Court had no jurisdiction to seize the property through its receivers. In that case, the costs were saddled on the plaintiff without an inquiry, and without the Court having before it the materials necessary for determining how the costs of the receivership should be borne. In this case, the bearing of the costs of the receivership was one of the principal questions litigated after the coming down of the first mandate from the Circuit Court of Appeals. In that case, the receivership, although erroneous, had realized a fund in the Federal Court, out of which the costs could be and were paid. In this case, the receivership has not realized any fund, and the decree sought to be reviewed will, if not reversed, permit the petitioner's property, seized without right, to be sold to pay the expenses of the seizure and the fees of the receivers and their counsel.

*Clark vs. Brown*, 119 Fed. 130. This case is important as showing what facts were held to constitute sufficient acquiescence to prevent the corporation from objecting to

paying for the costs of an erroneous receivership. The Circuit Court of Appeals said:

"Moreover, notwithstanding the recital in the stipulation for the sale of the flax by the receiver that he had been appointed 'over the objection and opposition of the defendant,' it fully appears from the record that, while defendant did not directly consent to the appointment, he made no objection to it having color of seriousness or force. His answer to the order to show cause why a receiver should not be appointed was irrelevant. It was merely a statement that he was willing to pay complainant what the Court should find him entitled to on a contract with another for sale of the land, if complainant would execute to defendant a warranty deed of the land. \* \* \* And although, in the stipulation mentioned, it was recited that it should be 'without prejudice to the right of said defendant to a review upon appeal of the order of the Circuit Court appointing said receiver,' it appears from the assignment of errors on the appeal which followed to this Court, and which are set forth in the present record, that no question was raised or presented on that appeal as to the appointment of the receiver. As the appointment of the receiver was a proceeding in the cause prior to that appeal, the failure to question it upon that appeal was an acquiescence in the receivership, and no dispute as to the propriety or regularity of the appointment when made could afterwards be considered. \* \* \* Here the appointment of the receiver was proper, when made. No showing to the contrary was attempted by the defendant, whose proceedings and conduct showed acquiescence in the receivership throughout."

We consider that case favorable to us in that it shows what must exist to constitute acquiescence. *Greenbaum vs. Lafayette & Co.*, 128 Atl. 168 (New Jersey Court of Errors and Appeals, 1925). This case, and some other recent decisions of the New Jersey Courts, cited therein, have been relied on by the respondents. How different that case is from this case appears from the following quotation of the opinion of the Court of Errors and Appeals, at page 168:

"\* \* \* where a receiver is appointed by a court having jurisdiction to make the appointment, the costs and

expenses of the receivership are a first claim on the assets of the corporation of which he is the receiver, and may by the court be placed ahead of mortgages and other liens. In the present case the Court of Chancery was undoubtedly possessed of jurisdiction to make the appointment, even though the jurisdiction was improvidently exercised, and, for the reasons given in the case cited, the order to pay the fees of the receiver and auditor will be affirmed."

In our case, as the Circuit Court of Appeals in its first opinion said (R., 263-266), the District Court had no jurisdiction to appoint receivers, and should have refused to entertain the bill.

#### 4.

#### **The Failure to Appeal from the Order of July 13, 1922.**

This is relied on both by the District Court (R., 266, 278) and by the Circuit Court of Appeals (R., 580, 581, 582), as constituting acquiescence. The order of May 11th, 1922, pursuant to which the receivers seized the petitioner's property, was *ex parte* and required the petitioner to show cause before the District Court. That Court, therefore, was the proper place, in the first instance, to attack the validity of the *ex parte* seizure. This attack was there made, vigorously, but unsuccessfully, and the order of July 13th, 1922, was entered. This is the only order before the final decree, which was appealed from, that, under federal practice, could have been appealed from. Prior to the original Act of 1891, constituting the Circuit Courts of Appeal, that order was unappealable. There is nothing, however, in the statute permitting an appeal from that order, or in the decisions thereunder, which make a failure to appeal therefrom an acquiescence. On the contrary, it is elementary that on an appeal from the final decree, which was taken in this case, the appellant may complain of interlocutory orders.

*Central Trust Company vs. Seasongood*, 130 U. S. 482;

*Mendenhall vs. Hall*, 134 U. S. 559.

The conduct of the petitioner, between the making of the order of July 13th and the final decree which was appealed from, negatives the idea of acquiescence. At all times from May 18th, 1922, seven days after the original *ex parte* order appointing receivers, until the present, the receivers have known that the defendant was far from acquiescing in and was actively contesting their appointment and right to possess the property and assets of the defendant. At all times, except the period between July 13th, 1922 and October 26th, 1922, the District Court has known from its own records that this active opposition was persisted in. During that last mentioned interval, the bankruptcy proceedings in Delaware were being prosecuted. Those proceedings were actively opposed by the receivers (see the testimony taken before the Special Master, March 22nd, 1924 (R., 371, 374-376), April 11th, 1924 (R., 410)). Moreover, the receivers contend that this bankruptcy proceeding actively hindered their prosecution of their trust. In Exhibit I of April 11, 1924, annexed to the Master's report, is the following item for which the receivers claim credit: Demurrage cost by bankruptcy action, \$1,987. It appears from the testimony that this demurrage was due to the receivers' inability to unload incoming cars of material, pending bankruptcy action (Master's testimony, March 19th, R., 352). Moreover, the receivers, in their report and account said (R., 288):

“\* \* \* the result is entirely due to the continuous opposition of the corporation itself \* \* \*.”

The contempt proceedings against the president and certain directors of the petitioner, which the docket entries show commenced October 26th, 1922, and the order on which was not entered until December 26, 1922, after the decree first appealed from, were based on action taken by those directors which facilitated the bankruptcy proceedings. In the face of all this, how can it possibly be said that the petitioner acquiesced because it did not appeal from the order of July



13, 1922? The bankruptcy proceedings far more effectively interfered with the progress of the receivership than an appeal taken in midsummer.

Of course, if there is something magic about the taking of an appeal, that is the end of it, but no authority to that effect is adduced, and such a holding would be directly contrary to the decision of the New York Court of Appeals in *Hernandez vs. Brookdale Mills*, 134 N. E. 568 (1921).

## 5.

### The Alleged Delay in Intimating Lack of Jurisdiction.

The Circuit Court of Appeals, in its opinion (R., 581) says, as the reason for affirming the District Court:

"Though vigorously opposing the receivers in other ways, the corporation did not intimate a lack of jurisdiction on the part of the Court to appoint receivers until, months after the appointment, a proceeding for contempt was instituted, \* \* \*."

Just how the corporation could more thoroughly have denied the District Court's jurisdiction than by taking the action which brought its directors up for contempt of the order not appealed from is hard to see, but the objection to the decision of the Circuit Court of Appeals goes deeper. That Court admits, in both its opinions (R., 263, 580, 582), that the appointment of the receivers was vigorously opposed at all times. This opposition was based, among other things, on the ground that the corporation was solvent. At all times, the fact of its solvency was urged upon the Court as a reason for not appointing the receivers and why the *ex parte* appointment and seizure pursuant thereto should be set aside. It is true that it cannot be said that the solvency of the corporation was, prior to the contempt proceedings in October, 1922, urged upon the District Court as depriving it of jurisdiction. It was, however, always urged as a reason why the *ex parte* appointment should be revoked, although not on jurisdictional grounds. The Court, therefore, and the receivers, had notice at all times that the validity of the appointment was

attacked. The Court is supposed to know the law and is supposed, therefore, at all times, to have known that the solvency, in fact, of the corporation deprived the Court of jurisdiction to seize its property. The only possible relevancy of acquiescence in any case can be only one of equity and fair dealing. A Court might say that where a corporation, in fact, stands by and permits its property to be seized and managed by receivers, without objecting to such seizure or such management, that corporation cannot later be heard to say that the Court has no right to charge its property with the expenses of the receivership; but where, at all times, the corporation actively opposes the receivership and takes such steps as it is from time to time advised by counsel to take to get its property out of the wrongful grip of the Court, there is nothing unfair or inequitable in the corporation, when it finally succeeds in obtaining an adjudication that the seizure was beyond the jurisdiction of the seizing Court, in demanding that its property be returned unencumbered by the expenses of the receivership. It is not intellectually honest to say that such a corporation acquiesced in the seizure, and it is technical, and inconsistent with enlightened jurisprudence or modern ideas to say that although the corporation did not acquiesce, that because it did not utter the magic cabalistic word "jurisdiction", it must, notwithstanding its continued opposition, have its property charged with the expenses of the void receivership.

### III.

#### **Acquiescence cannot possibly justify indebtedness incurred after the acquiescence ceased.**

The Courts below justify their decisions because the petitioner did not, prior to the argument on which there was made the final decree of December 22, 1922 (R., 254), say that the Court had no jurisdiction to appoint receivers. Admittedly, from that date, the attack on the jurisdiction was made. Neither of the Courts below contend that the

acquiescence continued thereafter. Much of the receivers' indebtedness was, however, thereafter incurred. For example, the receivers' certificates of \$25,000, with interest, all post-date not only the decree appealed from, but the appeal itself. These certificates were authorized by the *ex parte* order of May 11th, 1922. It appears, however, from the Master's report (R., 430) that the certificates originally borrowed were all paid back December 18, 1922, and no new certificates were issued until May 3, 1923. This was after the appeal was taken and after it had been argued before the Circuit Court of Appeals (R., 262). A party lending money on receivers' certificates is bound to take notice of the state of the record and of the authority or want of authority of the receivers to issue them.

*Knickerbocker Trust Co. vs. Onconta*, 94 N. E. 871  
(New York Court of Appeals, 1911).

What more could the petitioner do than it had then done to prevent further encumbering of its property and what equity is there in preferring the receivers or the person who lent money on these certificates over the diligent petitioner?

#### IV.

#### **Refutation of certain arguments that may be advanced by the respondents.**

It has been intimated that the respondents may urge in support of the decree sought to be reviewed that the first decree of the Circuit Court of Appeals was erroneous and that that Court should have affirmed the appointment of the receivers by the District Court. That first decree of the Circuit Court of Appeals put an end to the receivership as a going concern. The respondents could have asked this Court to review that decree by certiorari. Not having done so, they have acquiesced, and that decree of the Circuit Court of

Appeals has become the law of the case and cannot now be questioned.

*Thompson vs. Maxwell Land Grant Co.*, 168 U. S. 451;

*Wakelee vs. Davis*, 44 Fed. 532;

*Henning vs. Eldredge*, 148 Ill. 305, 33 N. E. 754;

*Silva vs. Pickard*, 47 Pac. 144 (Utah).

In the second place, the first decree of the Circuit Court of Appeals was clearly right. We cannot put the case any better than that Court has done in its opinion (R., 263).

Counsel for the respondents in his brief in the Circuit Court of Appeals used as a basis for his argument of acquiescence certain statements alleged to have been made by the then counsel for the petitioner in the argument before the District Court, pursuant to which that Court made the order of July 13th, 1922. These alleged statements are without foundation in the record and we doubt if they will be relied on in this Court, but as relied on in the Court below they did not amount to an admission that the Court then had jurisdiction to appoint receivers on the application then pending. That jurisdiction was denied, but the alleged statement contained an admission that on final hearing which stage the Court was not then in—the Court would have jurisdiction so to appoint. The lack of jurisdiction to appoint in the then pending proceeding was consistently urged.

Counsel may urge that the District Court had power to appoint a receiver while it was inquiring into the fact of solvency. Whether this be legally valid or not, the fact remains, as the Circuit Court of Appeals, in its first opinion (R., 263), points out, that when the order of July 13th, 1922, was made, the Court found that the corporation was not insolvent. The factual basis for this argument, then, wholly fails.

We have not adverted to any of the details of the receivers' account or criticized at all the Courts below in allowing certain items of disbursements and indebtedness, which were in

the Courts below specifically objected to. We feel that such details are not matters which would interest this Court on an application for certiorari. Should that writ be allowed, we shall have something to say on this subject. What we have discussed we are confident will show this Court that the action of the Court below has not only caused a grave injustice to the petitioner, but has established a very dangerous precedent.

Respectfully submitted,

ROBERT H. McCARTER

G. W. C. McCARTER

Of counsel with Petitioner.

Office Supreme Court, U.

FILED

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WM. R. STANSBURY

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IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1926.

No. 227.

BURNRITE COAL BRIQUETTE COMPANY,  
A CORPORATION,

*Petitioner,*

*vs.*

EDWARD G. RIGGS AND ALFRED L. KIRBY AND JOHN P.  
DUFFY, AS RECEIVERS OF BURNRITE COAL BRIQUETTE COMPANY,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT.

**BRIEF FOR PETITIONER.**

ROBERT H. McCARTER,  
G. W. C. McCARTER,

*Of Counsel with Petitioner.*

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**BRIEF FOR PETITIONER.**

## A.

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**B.**

The opinion of the Circuit Court of Appeals on the first appeal is reported at 291 Fed. 754. The opinion of the Circuit Court of Appeals on the second appeal, namely, the opinion sought to be reviewed is reported 6 Fed. (2nd) 226. The District Court's opinion is not reported.

**C.**

1. The judgment to be reviewed was entered June 27, 1925 (R., 582).

2. The making of the said decree of June 27, 1925 (R., 582) is relied on as the basis of this Court's jurisdiction. This Court's order allowing the certiorari appears at R. 587.

3. The statutory provision under which such jurisdiction is invoked is subdivision *a*, Section 240 of the Judicial Code, as amended by Section 1 of an Act of Congress entitled "An Act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court and for other purposes", approved February 13, 1925, 43 Statutes at Large, 936, 938, which reads:

"(a) In any case, civil or criminal, in a circuit court of appeals or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

4. *White v. Mechanics Securities Corporation*, 269 U. S. 283, sustains this court's jurisdiction under that act.

**D.****Statement of the Case.**

On May 11, 1922, Edward S. Riggs, a citizen and resident of the State of New York, filed in the District Court of the United States for the District of New Jersey his bill of complaint, verified by affidavit, against the petitioner, Burn-rite Coal Briquette Company, a corporation of the State of Delaware (R., 7). On filing that bill and affidavits, the Court *ex parte* appointed Alfred L. Kirby and John P. Duffy temporary receivers of the petitioner, authorizing them to conduct the business theretofore conducted by your petitioner, and authorizing them to borrow not more than Twenty-five Thousand Dollars (\$25,000.00) on receivers' certificates, and requiring the petitioner to show cause why the appointment of receivers should not be continued during the pendency of the suit (R., 19). On May 18, 1922, the petitioner presented its duly verified petition, praying that an order be made directing the receivers to desist and refrain from admitting any person into the petitioner's factory to examine its books, processes or machinery, and to desist and refrain from removing or repairing the property of the petitioner, or incurring any indebtedness or charge against that property, or from disclosing any information secured by them as receivers, and praying that the receivers and the complainant show cause why the receivers should not be discharged (R., 23). On this petition, an order to show cause was made with an *ad interim* restraint (R., 40). Voluminous affidavits were filed on both sides, and both foregoing orders to show cause were duly continued until June 5, 1922, on which date there was filed the petitioner's answer, which, among other things, denied the jurisdiction of the Court (R., 69). After argument, the District Court of the United States for the District of New Jersey, filed an opinion (R., 249), pursuant to which, on July 13, 1922, it made a decree continuing the receivers and the injunctive relief previously granted in the

*ex parte* order of May 11, 1922, until final hearing, and added an injunction against the petitioner, its officers and agents, from exercising any of its franchises or privileges (R., 252). No appeal from this order was taken. The petitioner, through its officers and directors, so far disregarded the assumed jurisdiction of the District Court of the United States for the District of New Jersey, by facilitating an adjudication in bankruptcy pursuant to a petition filed against the petitioner in the District Court of the United States for the District of Delaware, that on October 26, 1922, a petition was filed by the receivers praying that the officers and directors be adjudged in contempt of the District Court of the United States for the District of New Jersey (R., 2). Upon the hearing on the contempt proceedings, the officers and directors urged in the defense of their actions want of jurisdiction in the Court to make the orders, for the violation of which they were sought to be held in contempt. The time to appeal from the order of July 13, 1922, having expired, the cause was, on November 7, 1922, placed on the calendar for final hearing. On December 1, 1922, notice of a motion to vacate the orders of May 11th and July 13th, 1922, was filed. The petitioner consenting that final hearing be had on the affidavits previously filed on both sides, final hearing and the hearing on the last mentioned motion was had, upon which the Court, on December 22, 1922, made its final decree, continuing the receivers with all powers theretofore granted, and with all powers conferred upon receivers by an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)", continued all the injunctive relief previously granted; adjudged that the business of the petitioner had been grossly mismanaged and had been and was being conducted at a great loss, but adjudged that the petitioner was not insolvent (R., 254). From this final decree, an appeal was promptly taken to the Circuit Court of Appeals for the Third Circuit, and the assignments of error thereunder attacked the Court's taking jurisdiction of the suit and making the orders of May 11th

and July 13th, 1922, as well as the final decree directly appealed from (R., 256). The Circuit Court of Appeals, after argument, filed its opinion (R., 263) sustaining the petitioner's contention and on August 11, 1923, sent to the District Court its mandate which provided:

"that the decree of the said District Court in this cause be, and the same is hereby reversed with costs, and the cause remanded to the said District Court with instructions to dismiss the bill on the ground that the company in question being a solvent foreign corporation, the Court had no jurisdiction to appoint receivers."

On the coming down of that mandate, the petitioner moved the District Court to comply with the terms thereof and to dismiss the bill, order the receivers to turn over the property forthwith and to account with all convenient speed. This the Court refused to do, but on January 24th, 1924, made an order (R., 279) which provided, as follows:

"and this Court being of opinion that the receivers should account before the bill be dismissed,

It is, thereupon, on this 24 day of January, 1924, ORDERED that Alfred L. Kirby and John P. Duffy do account to this Court, as receivers of the defendant above named.

\* \* \* \* \*

that all further equity abide the order of this Court upon the hearing on the said account and exceptions thereto."

The Receivers filed an account (R. 280) which was in such an unintelligible form that the petitioner filed exceptions thereto (R., 300). On February 21st, 1924, after those exceptions had been filed, the Court made an order referring it to a Master to take and state the account of the receivers, and reserving all further equity until the hearing on the account and the exceptions thereto (R., 304). Hearings were had before the Special Master, and in July, 1924, he filed his report stating the receivers' account and, unwarrantedly, the petitioner contends, passing on the exceptions taken to the account as filed originally by the receivers

(R., 423). Exceptions were filed by the petitioner to the Master's report (R., 551). The exceptions to the receivers' account as originally filed, the exceptions to the Master's report, and the equity reserved in the order of January 24, 1924, were all brought on before the District Court of the United States for the District of New Jersey, and that Court, on December 19, 1924, made a decree (R., 565), by which decree the District Court of the United States for the District of New Jersey, ordered, adjudged and decreed, as follows:

"that the account of the receivers and the report of the special master herein be and the same is hereby ratified and confirmed, and the items contained in said account and report as disbursements are hereby approved as proper disbursements and as charges against the property in the hands of the receivers, and that the indebtedness of the receivers, as stated in said report and account, not paid, be and the same is hereby adjudged to be a proper lien and charge upon the property now in the control of the receivers belonging to the defendant corporation, and that the allowances herein made for fees of the special master and the receivers and counsel be and the same are hereby adjudged to be proper liens and charges upon the property in the control of the receivers belonging to the defendant corporation."

The decree went on to make allowances to the receivers and their counsel, directed the petitioner to pay to the receivers the amount of their indebtedness as disclosed by their account and report, together with the allowances, within five days, and, upon such payments being made, directing the receivers to release the petitioner's assets to it and that the bill be dismissed, but providing that in default of such payment that the property of the petitioner in the possession of the receivers be sold. From this decree, as modified by an order made January 5, 1924 (R., 567), your petitioner appealed again to the Circuit Court of Appeals for the Third Circuit, assigning for error among other things, the District Court's failure in its order of January 24, 1924,

to order the receivers forthwith to turn over the petitioner's property to the petitioner, and in permitting the receivers to hold possession of the petitioner's property pending their accounting, and also the District Court's decreeing, in the decree directly appealed from, that the disbursements of the receivers, their indebtedness, and the allowances, were a proper charge or lien upon the property of the petitioner in the receivers' hands, and ordering a sale of that property to raise the indebtedness and allowances (R., 569). After argument, the Circuit Court of Appeals for the Third Circuit filed a short opinion of affirmance (R., 579), and, on June 27, 1925, made its decree affirming, with costs, the decree of the District Court appealed from, namely, that of December 19, 1924 (R., 582). The mandate went down on July 27, 1925. This Court granted a certiorari November 23, 1925 (R., 587).

### **E.**

The assignments of error relied on are:

1. The Court erred in its order made and entered the twenty-fourth day of January, 1924, in not ordering the receivers of the defendant forthwith to turn over the defendant's property to defendant, and in permitting the receivers to hold possession of the defendant's property pending their accounting.

29. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

"That the indebtedness of the receivers as stated in said report and account, not paid, be and the same is hereby adjudged to be a proper lien and charge upon the property now in the control of the receivers belonging to the defendant corporation."

30. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

"That the allowances herein made for fees of the Special Master and the receivers and counsel be and the same

are hereby adjudged to be proper liens and charges upon the property in the control of the receivers, belonging to the defendant corporation."

31. The Court erred in decreeing, in and by its decree made and entered on December 19, 1924, as follows:

"That the said defendant corporation do pay to the said receivers the amount of the indebtedness of the said receivers as disclosed by their account and report together with the amount allowed to counsel for their compensation and to the special master for his services."

32. The Court erred in decreeing in and by its decree made and entered on December 19, 1924, as follows:

"That if said payments be not made within the time aforesaid then that the property of the defendant corporation within the control of the receivers be sold at such time and under such conditions as this court may by subsequent order herein direct, upon application to be made to this court by either party upon five days' notice to the solicitor of the other, to raise and pay said moneys aforesaid to the receivers, and upon such money being raised and paid what shall remain of the assets of the said corporation shall be paid or delivered to the said defendant corporation less the expenses of sale, and whatever future allowances may be made by this court to the receivers and counsel and whatever indebtedness the receivers may be obliged to incur approved by the court, and that upon the consummation of said sale and the raising and payment of said moneys aforesaid and the payment of whatever balance there may be to the corporation that the bill be dismissed."

3. The Court erred in its decree made and entered on the nineteenth day of December, 1924, in finding that the account filed by the receivers of the defendant is just and correct.

28. The Court erred in decreeing in and by its decree made and entered on December 19, 1924, as follows:

"The items contained in said account and report as disbursements are hereby approved as proper disbursements and as charges against the property in the hands of the receivers."

**F.****ARGUMENT.****SUMMARY.****I.**

The Court having no jurisdiction to appoint receivers had no jurisdiction to make the indebtedness of and allowances to the receivers and their counsel charges upon the petitioner's property seized without jurisdiction.

**II.**

When the record shows and the Court finds that the defendant corporation, the petitioner, vigorously opposed the appointment of receivers uninterruptedly from first to last, the Court cannot examine into the details of such opposition, and, on any technical grounds or reason not negating the fact of continued opposition to the receivership, find such acquiescence by the corporation as would charge it with the expenses of the receivership.

1. The facts.
2. The authorities.
3. Authorities relied on by the respondents.
4. The failure to appeal from the order of July 13th, 1922.
5. The alleged delay in intimating lack of jurisdiction.

**III.**

Acquiescence cannot possibly justify indebtedness incurred after the acquiescence ceased.

**IV.**

Refutation of certain arguments that may be advanced by the respondents.

**V.**

A consideration of the Receivers' Account.

1. Disbursements of Receivers.
2. Receivers' obligations.
3. Allowances to Receivers and Counsel.
4. Master's fee.



**I.**

**The Court having no jurisdiction to appoint receivers had no jurisdiction to make the indebtedness of and allowances to the receivers and their counsel charges upon the petitioner's property seized without jurisdiction.**

The situation cannot be better stated than it was in the opinion of the Circuit Court of Appeals on the first appeal (R., 263) :

"The appointment of receivers for a corporation is a matter of grave concern, because it takes its property, and the management thereof, out of the hands of those in whom the law vested it. It follows, therefore, that when a court exercises this power, its warrant so to do must be shown. Such action, over the protest and objection of the company, the District Court of New Jersey took in the appointment of receivers for the Burnrite Coal Briquette Company, a corporation of the State of Delaware, which Company that Court at the same time found was not insolvent. Such being the case, the basic and controlling question here involved is: Did the District Court of the United States for the District of New Jersey have jurisdiction to appoint receivers for a solvent foreign corporation? In our opinion, it had not, and the reason for so holding is that the law of New Jersey, as interpreted by its highest tribunal, has given no such power over foreign corporations to its own local courts, and the jurisdiction of the Court below was in that particular determined by that of the State courts."

After discussing the New Jersey cases, the Circuit Court of Appeals in their opinion concluded (R., 266) :

"It thus appearing that under the decisions of the highest tribunal of New Jersey, courts of that State had no statutory authority to appoint receivers for a solvent foreign corporation, it follows the United States District

Court of New Jersey had no such authority and should have refused to entertain this bill.

This basic jurisdictional question being determinative of the case, it follows that the terms of the order, which the Court made in a case when the Court had no power to make any order at all, constitute matters to which we need not advert. The case will, therefore, be remanded to the Court below, with instructions to dismiss the bill on the ground that the company in question being a solvent foreign corporation, the Court below had no jurisdiction to appoint receivers."

Pursuant to this opinion, there was made by that Court the decree of August 11, 1923 (R., 267).

The case, therefore, is one in which the District Court had no power to make any order at all. It is in principle, therefore, covered by the decision of this Court in *Lion Bonding Company vs. Karatz*, 262 U. S. 640. In that case, the District Court appointed a receiver and its action was affirmed by the Circuit Court of Appeals. On Certiorari, however, the Supreme Court held that the District was without jurisdiction, ordered a reversal and directed that the bill be dismissed (262 U. S. 77). Before the mandate issued, the receivers applied for modification of the decrees of the Supreme Court. They asked for approval of disbursements or expenses of the receivership, paid by them out of moneys realized from the assets of the corporation. They asked that they and their counsel be paid and that the creditors who filed their claims only in the Federal Court be protected by the order of the Supreme Court on the receiver in the State Court to take proceedings to protect such creditors. In denying the motion Brandeis, J., for the Court said:

"This Court is without power to grant any part of the relief sought. The District Court was without jurisdiction as a federal court to appoint receivers in, or otherwise to entertain, the Karatz suit. For this reason, among others, the Hertz suit, a dependent bill, was dismissed. As the lower federal courts lacked jurisdiction, they are necessarily without power to make any charge upon, or disposition of, the assets within their respective districts. Even where the court which appoints a

receiver had jurisdiction at the time, but loses it, as upon supervening bankruptcy, the first court cannot thereafter make an allowance for his expenses and compensation. He must apply to the bankruptcy court. Where a case is dismissed for want of jurisdiction as a federal court, there is not even power to award costs against the defeated party. The case at bar is unlike *Palmer v. Texas*, 212 U. S. 118, 132, upon which the receivers rely. In that case the costs and expenses of a receiver erroneously appointed by the federal court were directed to be paid out of funds realized in that court. There the Circuit Court had jurisdiction as a federal court; but the decree appointing the receiver was reversed, because it was erroneous.

Obviously, the Court has no power to direct the Department of Trade and Commerce of Nebraska to apply to the state court for the order allowing creditors to prove their claims in that court. Our jurisdiction is limited in this proceeding to the correction of the errors committed by the lower federal courts in taking jurisdiction and in granting relief. The only course open to the creditors, as to the receivers and their counsel, is to apply to the state court."

In the case at bar, at the time of the original appointment, the District Court for New Jersey had no jurisdiction as a federal court, by reason of the non-residence of both parties. That particular jurisdictional defect was cured, but the lack of power to seize the property of the petitioner remained throughout. Jurisdiction is power and power is jurisdiction. Parties cannot confer power on the federal courts where it does not exist. The question of acquiescence, therefore, is wholly immaterial.

## II.

**When the record shows and the court finds that the defendant corporation, the petitioner, vigorously opposed the appointment of receivers uninterruptedly from first to last, the court cannot examine into the details of such opposition, and, on any technical ground or reason not negating the fact of continued opposition to the receivership, find such acquiescence by the corporation as would charge it with the expenses of the receivership.**

### 1.

#### The Facts.

The jurisdiction of the District Court, as a federal court, depended solely upon diversity of citizenship. The bill of complaint, on its face, showed that the plaintiff, Riggs, was a citizen and resident of New York, and the defendant a corporation, and, therefore, a citizen of Delaware (R., 7). On this bill of complaint, which, under Section 813 of the Judicial Code, showed that the Court was without jurisdiction, the Court, *ex parte*, made its order of May 11, 1922 (R., 19), appointed receivers, directed them to conduct the petitioner's business, and authorized them to issue receivers certificates. Unfortunately, the petitioner, instead of appearing specially, presented its petition (R., 23), praying for the discharge of the receivers, and, on this petition, obtained a temporary limitation of their activities. The bill of complaint charged that the petitioner was insolvent. The voluminous affidavits on both sides were directed largely to this question, and the answer filed for the petitioner (R., 69) challenged the jurisdiction of the Court. After argument, the District Court made its order of July 13, 1922 (R., 252). This action was

excellently summarized by the Circuit Court of Appeals in its first opinion (R., 263) as follows:

"Such action, over the protest and objection of the company, the District Court of New Jersey took in the appointment of receivers for the Burnrite Coal Briquette Company, a corporation of the State of Delaware, which Company that Court at the same time found was not insolvent."

Hitherto, there was certainly no acquiescence. The order of July 13th, although appealable, was not appealed from, but the directors of the petitioner so far disregarded it that they were cited for contempt. After the time to appeal had expired, the petitioner facilitated an early final hearing, at which it moved to discharge the orders of May 11th and July 13th, 1922. On the final hearing, the Court made its final decree (R., 254) which was promptly appealed from, under assignments of error challenging all of the action of the Court from beginning to end (R., 256). It was this decree that the Circuit Court of Appeals reversed. After the decree of dismissal and with the mandate directing the District Court to dismiss the bill for want of jurisdiction, that Court, nevertheless, permitted its receivers to hold on to the petitioner's property (which they still hold) and made the indebtedness of the receivership and allowances to the receivers and counsel a charge on that property, which it ordered sold to make the same. The District Court, in so doing, acted directly in the teeth of numerous decisions in the Federal Courts.

## 2.

### The Authorities.

*Couper vs. Shirley*, 75 Fed. 168 (C. C. A., 9, 1896). In this case, the Circuit Court had *ex parte* appointed a receiver in foreclosure, relying upon a stipulation in this mortgage authorizing such appointment. Such appointment, however, was directly prohibited by a statute in Oregon, where the land lay, so that, upon this being called to the court's atten-

tion, the appointment was held to be contrary to public policy, and the receiver was discharged, and ordered to pay over to the defendant all the defendant's money and property in his hands, without deduction for allowances to the receiver or counsel. The receiver appealed from this order, which was affirmed, the court saying at page 171:

"Appellant claims that it was inequitable for the court, after appointing Couper receiver, to dismiss him without making some provision to pay him for his services and for the expenses by him incurred. The answer is that the court had no authority to make the appointment. It was made *ex parte*, without discussion. When the question properly came before the court, the receiver was removed. It may be that some provision ought to have been made for his pay, but it is clear to our minds that, upon the facts presented in this case, the party who improperly procured the appointment of the receiver should have been required—if the receiver was entitled to anything—to pay his expenses and services. Certain it is that the appellees, not being responsible for his appointment, could not be held liable; and, as against them, appellant is not entitled to any relief. The judgment of the circuit court is affirmed, with costs."

*Beech vs. Macon, etc., Co.*, 125 Fed. 513 (C. C. A., 5, 1903). A petition in involuntary bankruptcy was filed against Beech. The petitioning creditors procured *ex parte* the appointment of a receiver, who took possession of live stock, some of which was in the possession of D, who claimed to own it. The court made an order for the sale of the live stock, at which sale D bought in the stock, which she claimed to own, and obtained possession of it. This sale was confirmed by the District Court. On petitions by B and D to superintend and revise the orders appointing the receiver, and confirming the sale, the Circuit Court of Appeals ordered the money returned to D, and that the petitioning creditors pay all costs, including the compensation of the receiver. A mandate to this effect went down. On receipt of that mandate, the District Court directed the petitioning creditors should pay to B and D the amounts theretofore allowed and

paid out by the receiver out of the funds in his hands, the cost of the receivership, including the receiver's compensation, and his expenses, but permitted the receiver to deduct from the fund in his hands the expenses of the receivership in the necessary preservation and keeping of the estate, adjudging that to be a proper charge against the fund. This was the cost of keeping the live stock. B and D then filed a petition with the Circuit Court of Appeals to revise the order of the District Court entered on the mandate. The Circuit Court of Appeals held that the District Court should not have deducted the cost of keeping the live stock, saying on page 515:

"It is a principle of general application that, if the appointment of a receiver is erroneous or void, and the adverse party does not acquiesce in it, but continues to contest it to a successful termination, any compensation which may have accrued to the receiver in the meantime, and his expenses incurred in the administration of the estate, should be taxed to the parties who applied to have the appointment made."

and at page 517:

"If it should be held that, although the defendant succeeded in having reversed and set aside the order appointing the receiver, he was responsible for the expenses of the receiver in buying feed for the stock, the application of such sale, it seems to us, would lead in many cases to the greatest injustice. If the litigation was protracted, and some considerable time elapsed before the order appointing the receiver was vacated the expenses would often more than equal the value of the property."

\* \* \* \* \*

The property having been taken from the defendants against their consent under an erroneous order, which they resisted successfully in an appellate court, the only proper course is to return the property without charge of any kind against it or against the successful defendants. The defendants should be put in their former condition as nearly as possible. Instead of any sum being taxed against the defendants under such circumstances, they would be entitled in some jurisdictions to recover damages, in a proper action, for being deprived of the

use of the property. The petitioners who instituted the proceedings and secured the appointment of a receiver are properly and equitably chargeable with the costs expenses incurred by their wrongful application. In the event of their insolvency, any expenses incurred by the receiver should fall on him, and not on the defendants. He needs not become receiver unless he chooses, or he may require a bond of indemnity before accepting the position. In a case, therefore, where the receiver has been wrongfully appointed, and the order subsequently vacated, it would be more equitable that the receiver himself should sustain the loss or expenses of the receivership paid by him than that they should be taxed to the successful defendants.

*Chicago, etc., Co. vs. Newman*, 187 Fed. 573 (C. C. A., 7, 1911). This case was commenced in the state court where a receiver was appointed, and then was removed to the federal court, which dismissed the bill on the ground that the court would not interfere with the internal affairs of a foreign corporation, and ordered the receiver to turn back all property, and to present his account within three days. The receiver sought to obtain compensation for himself and attorney. The court held that the receiver must pay over all to the defendant, and look to the complainant for reimbursements. The receiver appealed, and the Circuit Court of Appeals affirmed the Circuit Court.

*Fryer vs. Weakley*, 261 Fed. 509 (C. C. A., 8, 1919). The court's decision on our point appears from the following quotation of the opinion on page 514:

"The conclusion is that this case falls clearly without the jurisdiction of this court, under the opinion of Judge Carland in *Hawes v. First National Bank*, 229 Fed. 51, 143 C. C. A. 645. The order of the court below appointing the receiver must therefore be reversed, and the case must be remanded to the District Court, with directions to cause all the moneys and property and all the proceeds of the property seized or collected by the receiver to be paid over and delivered to the defendants W. S. Fryer and G. L. Fryer, and to tax the costs and expenses of the receiver against the plaintiff below. The



court, being without jurisdiction, has no property to pay them. As was well said by Judge Carland in the *Hawes Case*: "Where a receivership is procured illegally, the costs of the receivership may be taxed against the complainant procuring the appointment. \* \* \* Courts may not seize property without jurisdiction, and then claim jurisdiction over the property because it is in the possession of the court."

*Brictson Mfg. Co. vs. Woodrough, District Judge*, 284 Fed. 484 (C. C. A., 8, 1922). This was a petition by the defendant for a mandamus to the District Judge to comply with the mandate of the Circuit Court of Appeals. The decision appears from the following quotation from the head-note:

"Where appointment of receiver in stockholders' suit was reversed for lack of jurisdiction of the trial court and case remanded with directions that the receiver be required to return all property in his hands to those from whom he received it and that the bill of complaint be dismissed, it was error for the trial court to dismiss the complaint but to order that property in the receiver's hands be impounded in his hands pending further proceedings on an intervention petition; for, where possession of property is acquired, without jurisdiction, such possession will not itself confer jurisdiction, \* \* \*."

A problem somewhat similar to that before this court was before Judge Learned Hand in the case of *In re: Hurlburt Motors, Inc.*, 275 Fed. 62 (1920). In that case, a petition in bankruptcy was filed against the respondents, and a receiver appointed. The respondents unsuccessfully moved to vacate the receivership. The receiver had conducted the business at a profit of some \$2,900, pending the proceedings in which a jury found the respondents solvent. The respondents applied for an order dismissing the petition, and directing the receiver to turn over the assets. Judge Hand said, at page 63:

"I think that the rule is that the defendant's or respondent's estate is not liable for the receiver's debts or his compensation beyond the amount of the profits

realized or improvements arising through profits. \* \* \* As to anything more, the receiver and his creditors have the responsibility only of the plaintiffs or petitioners.

Therefore, if the receiver had in his hands no more than the original value of the property seized, he would be obliged to turn back everything to the respondents and look wholly to the petitioners for his compensation and so would his creditors. The respondents not only did not consent, but actively opposed the seizure; they could not be required to pay the expenses. It appears, however, that the receiver has now in his hands more than the amount of property received by about three thousand dollars. This is obviously not a profit till his debts and his own allowances are paid, and there is no propriety in paying it over to the respondents. True, their own profits might have been as much or more, and, if so, they have recourse against the petitioners for the loss; but as against the receiver and his creditors they must yield. The proper result, if all could be worked out, would be this: The receiver and his creditors should be entitled to the profits, when ascertained, in payment of their claims, and the petitioners should pay any balance; the respondents should be entitled to collect from the petitioners the allowance of their counsel and any profits they could show they have lost by reason of the mistaken seizure.

Unfortunately, this would take time, and meanwhile the respondents would be kept out of their property, which they need at once, if it is to be saved at all. Some present solution must be found, if only provisional. The best which I can devise is this: The receiver's accounts show an estimated profit of \$3,000; they are in evidence and can be referred to. So much of the assets he should be allowed to retain against his debts and his allowances. He will turn over the other assets forthwith to the respondents. Then he will state his accounts to a special master, who will fix his profits, state his unpaid debts, and fix his allowance and that of his attorney. At the same time the respondents will have the allowance fixed of their counsel, and prove what, if any, profit they have lost during the period of the receivership. When these figures are found, an order may pass directing the petitioners to pay to the respondents their counsel fee and the profit lost by them by reason of the

seizure, also to the receiver and his creditors any unpaid balance, the respondents shall be liable to an amount equal to the difference between the profits as found and the sum retained by the receiver."

That case is a stronger one for the receiver than the case at bar, because, on the face of the original papers, the court had jurisdiction to appoint receivers, and, furthermore, because by accounts filed in the cause, a profit in the operation of the business was shown.

*Haues vs. First National Bank of Madison*, 229 Fed. 51 (C. C. A., 8, 1915). In this case the District Court appointed a receiver but the Circuit Court of Appeals reversed the appointment on the ground that the District Court was without jurisdiction by reason of the absence of an indispensable party. It held that the receiver was illegally appointed, therefore, and reversed the District Court. In disposing of the receiver's contention that the costs of the receivership should be paid out of the property, the Court said, "In the case at bar, the court, being without jurisdiction, has no property with which to pay any one, and hence is not ruled by *Atlantic Trust Co. v. Chapman*, 208 U. S. 360, 28 Sup. Ct. 406, 52 L. Ed. 528, 13 Ann. Cas. 1155. Courts may not seize property without jurisdiction, and then claim jurisdiction over the property because it is in the possession of the court."

A most important decision is *Lion Bonding Company vs. Karatz*, 262 U. S. 640, cited under Point I hereinabove.

### 3.

#### Authorities Relied on by the Respondents.

There are only four cases relied on by the respondents which deserve comment.

*Atlantic Trust Company vs. Chapman*, 208 U. S. 360. In this case, a receiver in foreclosure had been appointed and performed his duties. No attack on the receivership or on the jurisdiction of the Court was made, but the property did not bring sufficient to meet the expenses incurred by the

receiver. An attempt was made to charge these expenses against the complainant, which the Circuit Court of Appeals sustained. This Court, on certiorari, reversed the Circuit Court of Appeals. The case, therefore, decided only that the costs of a valid receivership, which realized a deficiency, cannot be charged against the complainant. It decided nothing else.

*Palmer vs. Texas*, 212 U. S. 118. A state court of Texas had appointed a receiver for a corporation, which appealed from the appointment, and made the appeal a supersedeas, so that, pending that appeal, the state receiver relinquished possession. The action in question was then commenced in a federal court in Texas, and a receiver appointed, which appointment was reversed by the Circuit Court of Appeals as erroneous. The case was then brought to the Supreme Court by certiorari, after the Circuit Court of Appeals had assessed the costs of the receivership against the plaintiff. All that appears in the opinion of this Court on the question of costs is the following (p. 132) :

"We think the Circuit Court of Appeals was right in reversing the order of the Circuit Court appointing the receiver. In that court the costs of the receivership were assessed against Palmer, the original complainant. The receivership has gone on pending the proceedings upon appeal and we are of opinion that justice will be done if the costs of the receivership are paid out of the fund realized in the Federal Court, and it is so ordered;

\* \* \*

In the argument for the petitioners, the following facts appear, however (p. 120) :

"The Court of Appeals was also wrong in directing that the costs of the receivership be taxed against the complainant. That was a question between the parties to the suit, and was not involved in the appeal of the State of Texas and Eckhardt from the orders refusing their application, and the materials necessary for determining how the costs of the receivership should be borne were not before the court. Those costs were not part of the costs of the appeal. By the effect of the supersedeas, the

property and business of the company remained in its hands in the same manner as if there had been no judgment or order of the state court. The expenses of the receivership were a part of the expenses of carrying on the business, and should be dealt with accordingly. If the State should ever be in a position to call for an account of the business of the company during the pendency of the appeal in the state courts, the question how the expenses of the receivership should be borne may arise. But it does not arise upon the appeal in this case, and the expenses ought not to be saddled on the plaintiff without an inquiry."

Among the differences between *Palmer vs. Texas* and this case, are the following:

In that case, the receivership was erroneous. In this case, the Court had no jurisdiction to seize the property through its receivers. In that case, the costs were saddled on the plaintiff without an inquiry, and without the Court having before it the materials necessary for determining how the costs of the receivership should be borne. In this case, the bearing of the costs of the receivership was one of the principal questions litigated after the coming down of the first mandate from the Circuit Court of Appeals. In that case, the receivership, although erroneous, had realized a fund in the Federal Court, out of which the costs could be and were paid. In this case, the receivership has not realized any fund, and the decree sought to be reviewed will, if not reversed, permit the petitioner's property, seized without right, to be sold to pay the expenses of the seizure and the fees of the receivers and their counsel.

*Clark vs. Brown*, 119 Fed. 130. This case is important as showing what facts were held to constitute sufficient acquiescence to prevent the corporation from objecting to paying for the costs of an erroneous receivership. The Circuit Court of Appeals said:

"Moreover, notwithstanding the recital in the stipulation for the sale of the flax by the receiver that he had been appointed 'over the objection and opposition of the

defendant,' it fully appears from the record that, while defendant did not directly consent to the appointment, he made no objection to it having color of seriousness or force. His answer to the order to show cause why a receiver should not be appointed was irrelevant. It was merely a statement that he was willing to pay complainant what the Court should find him entitled to on a contract with another for sale of the land, if complainant would execute to defendant a warranty deed of the land. \* \* \* And although, in the stipulation mentioned, it was recited that it should be 'without prejudice to the right of said defendant to a review upon appeal of the order of the Circuit Court appointing said receiver,' it appears from the assignment of errors on the appeal which followed to this Court, and which are set forth in the present record, that no question was raised or presented on that appeal as to the appointment of the receiver. As the appointment of the receiver was a proceeding in the cause prior to that appeal, the failure to question it upon that appeal was an acquiescence in the receivership, and no dispute as to the propriety or regularity of the appointment when made could afterwards be considered. \* \* \* Here the appointment of the receiver was proper, when made. No showing to the contrary was attempted by the defendant, whose proceedings and conduct showed acquiescence in the receivership throughout."

We consider that case favorable to us in that it shows what must exist to constitute acquiescence. *Greenbaum vs. Lafayette & Co.*, 128 Atl. 168 (New Jersey Court of Errors and Appeals, 1925). This case, and some other recent decisions of the New Jersey Courts, cited therein, have been relied on by the respondents. How different that case is from this case appears from the following quotation of the opinion of the Court of Errors and Appeals, at page 168:

"\* \* \* where a receiver is appointed by a court having jurisdiction to make the appointment, the costs and expenses of the receivership are a first claim on the assets of the corporation of which he is the receiver, and may by the court be placed ahead of mortgages and other liens. In the present case the Court of Chancery was

undoubtedly possessed of jurisdiction to make the appointment, even though the jurisdiction was improvidently exercised, and, for the reasons given in the case cited, the order to pay the fees of the receiver and auditor will be affirmed."

In our case, as the Circuit Court of Appeals in its first opinion said (R., 263-266), the District Court had no jurisdiction to appoint receivers, and should have refused to entertain the bill.

#### 4.

#### The Failure to Appeal from the Order of July 13, 1922.

This is relied on both by the District Court (R., 266, 278) and by the Circuit Court of Appeals (R., 580, 581, 582), as constituting acquiescence. The order of May 11th, 1922, pursuant to which the receivers seized the petitioner's property, was *ex parte* and required the petitioner to show cause before the District Court. That Court, therefore, was the proper place, in the first instance, to attack the validity of the *ex parte* seizure. This attack was there made, vigorously, but unsuccessfully, and the order of July 13th, 1922, was entered. This is the only order before the final decree, which was appealed from, that, under federal practice, could have been appealed from. Prior to the original Act of 1891, constituting the Circuit Courts of Appeal, that order was unappealable. There is nothing, however, in the statute permitting an appeal from that order, or in the decisions thereunder, which make a failure to appeal therefrom an acquiescence. On the contrary, it is elementary that on an appeal from the final decree, which was taken in this case, the appellant may complain of interlocutory orders.

*Central Trust Company vs. Seasegood*, 130 U. S. 482;

*Mendenhall vs. Hall*, 134 U. S. 559.

The conduct of the petitioner, between the making of the order of July 13th and the final decree which was appealed from, negatives the idea of acquiescence. At all times from May 18th, 1922, seven days after the original *ex parte* order appointing receivers, until the present, the receivers have known that the defendant was far from acquiescing in and was actively contesting their appointment and right to possess the property and assets of the defendant. At all times, except the period between July 13th, 1922 and October 26th, 1922, the District Court has known from its own records that this active opposition was persisted in. During that last mentioned interval, the bankruptcy proceedings in Delaware were being prosecuted. Those proceedings were actively opposed by the receivers (see the testimony taken before the Special Master, March 22nd, 1924 (R., 371, 374-376), April 11th, 1924 (R., 410)). Moreover, the receivers contend that this bankruptcy proceeding actively hindered their prosecution of their trust. In Exhibit I of April 11, 1924, annexed to the Master's report, is the following item for which the receivers claim credit: Demurrage cost by bankruptcy action, \$1,987. It appears from the testimony that this demurrage was due to the receivers' inability to unload incoming cars of material, pending bankruptcy action (Master's testimony, March 19th, R., 352). Moreover, the receivers, in their report and account said (R., 288):

“\* \* \* the result is entirely due to the continuous opposition of the corporation itself \* \* \*.”

The contempt proceedings against the president and certain directors of the petitioner, which the docket entries show commenced October 26th, 1922, and the order on which was not entered until December 26, 1922, after the decree first appealed from, were based on action taken by those directors which facilitated the bankruptcy proceedings. In the face of all this, how can it possibly be said that the petitioner acquiesced because it did not appeal from the order of July 13, 1922? The bankruptcy proceedings far more effectively



interfered with the progress of the receivership than an appeal taken in midsummer.

Of course, if there is something magic about the taking of an appeal, that is the end of it, but no authority to that effect is adduced, and such a holding would be directly contrary to the decision of the New York Court of Appeals in *Hernandez vs. Brookdale Mills*, 232 N. Y. 552, 134 N. E. 568 (1921).

## 5.

### The Alleged Delay in Intimating Lack of Jurisdiction.

The Circuit Court of Appeals, in its opinion (R., 581) says, as the reason for affirming the District Court:

"Though vigorously opposing the receivers in other ways, the corporation did not intimate a lack of jurisdiction on the part of the Court to appoint receivers until, months after the appointment, a proceeding for contempt was instituted, \* \* \*."

Just how the corporation could more thoroughly have denied the District Court's jurisdiction than by taking the action which brought its directors up for contempt of the order not appealed from is hard to see, but the objection to the decision of the Circuit Court of Appeals goes deeper. That Court admits, in both its opinions (R., 263, 580, 582), that the appointment of the receivers was vigorously opposed at all times. This opposition was based, among other things, on the ground that the corporation was solvent. At all times, the fact of its solvency was urged upon the Court as a reason for not appointing the receivers and why the *ex parte* appointment and seizure pursuant thereto should be set aside. It is true that it cannot be said that the solvency of the corporation was, prior to the contempt proceedings in October, 1922, urged upon the District Court as depriving it of jurisdiction. It was, however, always urged as a reason why the *ex parte* appointment should be revoked, although not on jurisdictional grounds. The Court, therefore, and the receivers, had

notice at all times that the validity of the appointment was attacked. The Court is supposed to know the law and is supposed, therefore, at all times, to have known that the solvency, in fact, of the corporation deprived the Court of jurisdiction to seize its property. The only possible relevancy of acquiescence in any case can be only one of equity and fair dealing. A Court might say that where a corporation, in fact, stands by and permits its property to be seized and managed by receivers, without objecting to such seizure or such management, that corporation cannot later be heard to say that the Court has no right to charge its property with the expenses of the receivership; but where, at all times, the corporation actively opposes the receivership and takes such steps as it is from time to time advised by counsel to take to get its property out of the wrongful grip of the Court, there is nothing unfair or inequitable in the corporation, when it finally succeeds in obtaining an adjudication that the seizure was beyond the jurisdiction of the seizing Court, in demanding that its property be returned unencumbered by the expenses of the receivership. It is not intellectually honest to say that such a corporation acquiesced in the seizure, and it is technical, and inconsistent with enlightened jurisprudence or modern ideas to say that although the corporation did not acquiesce, that because it did not utter the magic cabalistic word "jurisdiction", it must, notwithstanding its continued opposition, have its property charged with the expenses of the void receivership.

### III.

#### **Acquiescence cannot possibly justify indebtedness incurred after the acquiescence ceased.**

The Courts below justify their decisions because the petitioner did not, prior to the argument on which there was made the final decree of December 22, 1922 (R., 254), say that the Court had no jurisdiction to appoint receivers.

Admittedly, from that date, the attack on the jurisdiction was made. Neither of the Courts below contend that the acquiescence continued thereafter. Much of the receivers' indebtedness was, however, thereafter incurred. For example, the receivers' certificates of \$25,000, with interest, all post-date not only the decree appealed from, but the appeal itself. These certificates were authorized by the *ex parte* order of May 11th, 1922. It appears, however, from the Master's report (R., 430) that the certificates originally borrowed were all paid back December 18, 1922, and no new certificates were issued until May 3, 1923. This was after the appeal was taken and after it had been argued before the Circuit Court of Appeals (R., 262). A party lending money on receivers' certificates is bound to take notice of the state of the record and of the authority or want of authority of the receivers to issue them.

*Knickerbocker Trust Co. vs. Oneonta*, 201 N. Y. 379,  
94 N. E. 871.

What more could the petitioner do than it had then done to prevent further encumbering of its property and what equity is there in preferring the receivers or the person who lent money on these certificates over the diligent petitioner?

#### IV.

#### **Refutation of certain arguments that may be advanced by the respondents.**

It has been intimated that the respondents may urge in support of the decree sought to be reviewed that the first decree of the Circuit Court of Appeals was erroneous and that that Court should have affirmed the appointment of the receivers by the District Court. That first decree of the Circuit Court of Appeals put an end to the receivership as a going concern. The respondents could have asked this Court to review that decree by certiorari. Not having done so, they

have acquiesced, and that decree of the Circuit Court of Appeals has become the law of the case and cannot now be questioned.

*Thompson vs. Maxwell Land Grant Co.*, 168 U. S. 451;

*Wakelee vs. Davis*, 44 Fed. 532;

*Henning vs. Eldredge*, 148 Ill. 305, 33 N. E. 754;

*Silva vs. Pickard*, 47 Pac. 144 (Utah).

In the second place, the first decree of the Circuit Court of Appeals was clearly right. We cannot put the case any better than that Court has done in its opinion (R., 263).

Counsel for the respondents in his brief in the Circuit Court of Appeals used as a basis for his argument of acquiescence certain statements alleged to have been made by the then counsel for the petitioner in the argument before the District Court, pursuant to which that Court made the order of July 13th, 1922. These alleged statements are without foundation in the record and we doubt if they will be relied on in this Court, but as relied on in the Court below they did not amount to an admission that the Court then had jurisdiction to appoint receivers on the application then pending. That jurisdiction was denied, but the alleged statement contained an admission that on final hearing which stage the Court was not then in—the Court would have jurisdiction so to appoint. The lack of jurisdiction to appoint in the then pending proceeding was consistently urged.

Counsel may urge that the District Court had power to appoint a receiver while it was inquiring into the fact of solvency. Whether this be legally valid or not, the fact remains, as the Circuit Court of Appeals, in its first opinion (R., 263), points out, that when the order of July 13th, 1922, was made, the Court found that the corporation was not insolvent. The factual basis for this argument, then, wholly fails.

## V.

### The Receivers' Account.

#### 1. Disbursements of Receiver.

The receivers, who without right, have been in possession since May 11, 1922, have by their own statement received cash amounting to \$400,249.33 (Account, Analysis cash receipts, R. 297). Through their dealing without right with the property of the appellant, they have received this vast sum. What have they done with it? They attempt to tell us in their analysis of cash disbursements (R. 296). All of the disbursements are an unwarranted use of the appellant's money, for which the receivers should be surcharged.

For example, consider the following item on the analysis of cash disbursements (R., 296) :

A. Auditing and Investigating.....	\$2,511.86
------------------------------------	------------

A reference to the Master's report and to the schedule thereunto annexed, headed : "Analysis of auditing and investigating itemized to set forth each separate invoice and voucher" (R. 431) and the vouchers thereunto annexed, will show that this sum of \$2,511.86 was disbursed for secret service work investigating the labor at the factory, and retaining a member of the Delaware Bar to act for the receivers in opposing bankruptcy proceedings in Delaware, a payment to the Mashek Engineering Company for the inspection of the plant and report to the receivers on advisable repairs, and the balance to certified public accountants for auditing the corporation's books and making reports to the receivers, investigating the minutes of the corporation, and the stock holdings of its president, and preparing lists of transfers of stock by him and generally assisting the receivers in making reports and statements which were used by them in opposing the corporation's efforts to have the receivership set aside.

The item of executive salaries, \$8,150., represents payments received by the receivers on account of their allowance as made in and by the decree appealed from. The item, Legal and Professional Expenses, \$3,480.07, as it is itemized in the Master's report in schedule headed, "Analysis of Legal and Professional expenses itemized to set forth each separate invoice and voucher" (R. 505). Reference to this schedule and to the vouchers thereunto annexed will show that this disbursement, with one exception, item No. 13 of \$110., represents legal services rendered to the receivers by Messrs. Smith and Lane, their counsel in this suit, the disbursements of their counsel paid by them, stenographic, typewriting and printing expenses of this suit, O. K'd by the receivers' counsel and paid directly by the receivers, expenses going to Delaware to oppose the bankruptcy there, and services of counsel in opposing that bankruptcy. In other words, the receivers seek to charge the appellant's property with the cost of their vain effort in opposing the appellant in opposing the receivership and showing this court that the court below had no jurisdiction to appoint receivers and in other litigious activities, namely, opposing the Delaware bankruptcy. Merely to discuss the purpose of these disbursements is to make plain how ridiculous it is to consider that they are proper disbursements out of the moneys of the appellant, received by the receivers. Other items are equally ridiculous, for example, the item of demurrage, \$1987.00., but sufficient has been shown to illustrate our point.

## 2. Receivers' Obligations.

Not only do the receivers claim credit for their disbursements, but they seek to charge the appellant with unpaid obligations incurred by the receivers. These are of two kinds,—first, those appearing in their account under the head of, "Analysis of accounts payable" (R., 298), and secondly, the receivers' certificates. Included among the analysis of accounts payable is an item of taxes. Those, of course, are due and can be enforced by the State in accord-

ance with law. None of the other obligations incurred by the receivers in any way bind the appellant or its property. The receivers were appointed without jurisdiction and there is no way by which the law can or should impose upon or impute to, the appellant or its property, the obligations incurred by the receivers. Both principle and the cases above cited, unite in support of this. It is unnecessary, therefore, to consider the accounts payable in detail. Suffice it to say that the same can be said of those items as has been said of the same items included in the cash disbursements.

The receivers' certificates are in no different situation. The only order authorizing the issue of receivers' certificates is the *ex parte* order of May 11, 1922. One who lends moneys on receivers' certificates, like every one else, is presumed to know the law. On the face of the record, before there was a general appearance by the defendant, there was no jurisdiction to make an order authorizing certificates. After the general appearance, as we have shown, the jurisdiction to appoint receivers has been attacked steadily until the present. Moreover, and this is very important, it appears from the Master's report, under the schedule headed, "Analysis of receivers' certificates showing actual amount so borrowed and renewals" (R., 430), under explanation "B" as follows: "Item 1, \$10,000, was paid back to the bank. \$5,000 in November 25, 1922, and \$5,000, in December 18, 1922. Therefore there were no certificates outstanding between December 18, 1922 and May 3, 1923." The first appeal, that from the decree appointing the receivers, on which appeal this court held that there was no jurisdiction to appoint receivers, was perfected January 12, 1923. The outstanding certificates were not issued then until almost five months after the decree of the District Court appointing receivers was attacked by appeal on jurisdictional grounds and not until, if our memory is correct, after the argument of that appeal in this court. Anyone lending money on such certificates, acted at his peril of a reversal and is certainly not to be preferred over the innocent and always diligent appellant.

### 3. The Allowances to Receivers and Counsel.

Everything that has been said with respect to the disbursements of the receivers and their indebtedness, applies *a fortiori* to the allowances to receivers and counsel. As to those allowances, the case is, if possible, plainer and stronger than it is as to the disbursements and indebtedness of the receivers.

### 4. The Master's Fee.

The Court below directed the receivers to account. In purported compliance with that order, the receivers presented their report and account. The report is a long self serving statement. The account as filed by the receivers is not only misleading, but insufficient. It consists in the first place of an alleged comparative balance sheet, which, if correct, would be useful as a summary or recapitulation of a proper account. In addition to the balance sheet, instead of a proper account charging themselves with an inventory and all subsequent receipts and praying credit for disbursements, in other words, an account in the form of debtor and creditor as contemplated by Equity Rule 43, the receivers submitted five statements,—1. Analysis of cash receipts, 2. Analysis of cash disbursements, 3. analysis of accounts receivable by them at January 31, 1924, 4. analysis of accounts payable by them at January 31, 1924, and 5. a statement of receivers' certificates, loans and trade acceptances payable at January 31, 1924. No vouchers in support of the disbursements are shown or tendered. The appellant had no way of testing the accuracy of the account and the court had no way of ascertaining whether or not any of the disbursements for which credit is claimed should be treated differently and perhaps entitled to a credit as against the appellant to which other disbursements were not entitled, without the taking of testimony, the production of the vouchers and the restatement of the account by the Master. Notwithstanding the phraseology of the order of reference, which directed the



Master to take and state the receivers' account, the Master's report purports to say the account as filed was sufficient. Notwithstanding this white wash, the Master's report does, in effect, restate the account. (See the schedules thereto and supporting vouchers thereunto annexed.) Moreover, the testimony taken before the master analyzes and explains the disbursements. It was before the Master that, for the first time, the supporting vouchers were produced. The receivers, therefore, notwithstanding their duty to account, made necessary the reference to the Master. The receivers therefore should be personally charged with the Master's fee.

It is well settled that it is the duty of an accounting receiver to state his account with such particularity that the parties in interest may be sufficiently informed to be able to assent to the correctness thereof, and avoid the necessity of a reference. *Bertie vs. Abingdon*, 8 Beavan 53; *Hayden vs. Chicago Title, etc., Co.*, 55 Ill. App. 241; *Reeves' Appeal*, 3 Walker (Pa.) 199. Foster's Federal Practice 5th Edition, section 321. Furthermore, vouchers should be produced with the account. *Strauss vs. Casey Machine and Supply Co.*, 63 N. J. Eq. 19. In as much as the receivers' account did not comply with these requirements and made necessary the reference, they should be charged with the cost of the reference. *Bertie vs. Abingdon*, *Reeves' Appeal*, *supra*.

**Conclusion.**

The decree under review, therefore, is wrong in every particular as to each error assigned thereon. It should be reversed with directions that the property be forthwith turned back to the petitioner, free and discharged from any lien by reason of any obligations incurred by or for the receivers or their counsel, and with a further direction that the receivers' account be restated and they be sur-charged as receivers with all disbursements, and the bill forthwith dismissed.

Respectfully submitted,

ROBERT H. McCARTER,  
G. W. C. McCARTER,  
Of Counsel with Petitioner.

Office, Supreme Court, U.

FILED

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1926

No. 227

BURNRITE COAL BRIQUETTE COMPANY,  
a Corporation,  
*Petitioner,*

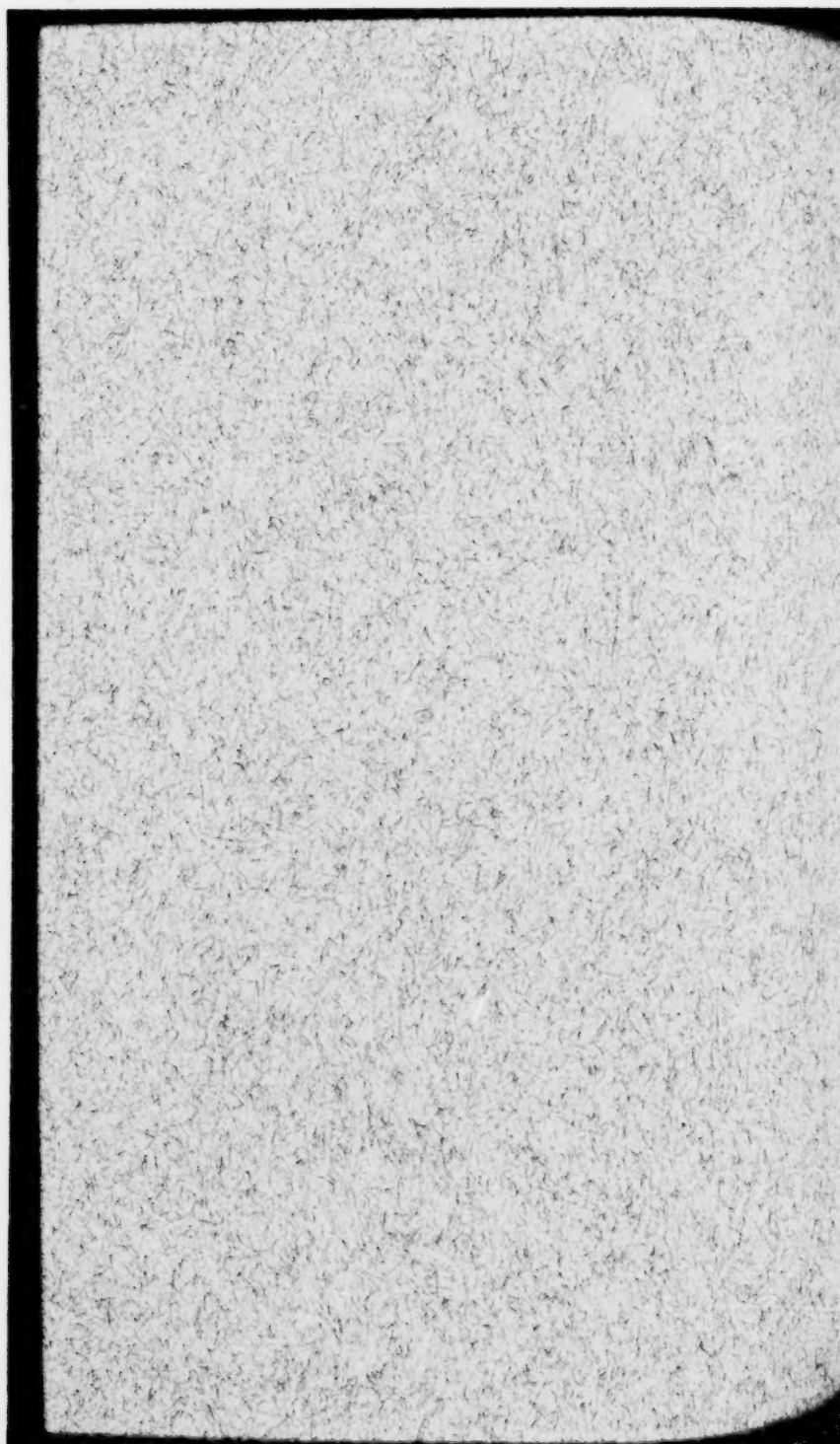
*vs.*

EDWARD G. RIGGS and ALFRED L. KIRBY and JOHN  
P. DUFFY, as receivers of Burnrite Coal Briquette  
Company,  
*Respondents.*

On Writ of Certiorari to the United States Circuit  
Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONER

JAMES J. LYNCH,  
GEORGE W. C. McCARTER,  
*Counsel for Petitioners.*



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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1926

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**No. 227**

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BURNRITE COAL BRIQUETTE COMPANY,  
a Corporation,  
*Petitioner,*

*vs.*

EDWARD G. RIGGS and ALFRED L. KIRBY and JOHN  
P. DUFFY, as receivers of Burnrite Coal Briquette  
Company,  
*Respondents.*

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On Writ of Certiorari to the United States Circuit  
Court of Appeals for the Third Circuit

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**REPLY BRIEF FOR PETITIONER**

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**ARGUMENT**

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**I.**

**Unjust Criticisms of the Officers of the Corporation**

The criticism of Mr. Crossman, the President of the Burnrite Coal Briquette Company and his associates is not supported by the Record. All the insinuations

against Mr. Crossman's management were explained fully in his affidavits at pages 26 to 32, 196 to 203, and in great detail in his affidavit at pages 209 to 221 of the Record. Also in affidavits of George M. Rubinow, R. p. 37; Henry C. Rodeman, R. p. 33; Herman Roth, R. p. 222; Edw. C. Smith, R. p. 222; Edw. M. Rodnock, R. p. 221; Daniel Van Winkle, R. p. 225; Oscar P. Shaller, R. p. 226; B. Gramitica, R. p. 227; John Stolz, R. p. 228; Joseph Kremer, R. p. 229; George W. Bogen, R. p. 230; John B. Lux, R. p. 230; John E. Lux, R. p. 232; J. P. Lux, R. p. 233; J. B. Lux, R. p. 234 and Andrew Fisher, R. p. 235.

The Court of Appeals expressly states that in this case "*No question of fraud is involved.*" (R. p. 266).

## II.

### **Receivers Having Been Wrongfully Appointed the Property Cannot be Burdened with the Expenses of the Receivership.**

While of course we very confidently insist that the Court was without any jurisdiction whatever to appoint the receivers, still, if the Court should find that the term "jurisdiction" was improperly used in the first opinion of the Circuit Court of Appeals and that the appointment of the receivers was wrongfully made by a Court having jurisdiction, the practical result would be the same as if the appointment had been made without jurisdiction so far as the rights of the parties of this particular case are concerned.

It cannot be disputed that the corporation vigor-



ously resisted the appointment of receivers throughout. There is no pretense that there was any acquiescence except in the failure to use the word "jurisdiction" in its objections to the receivership.

If, therefore, the defendant's property was wrongfully taken from its possession without its consent and over its vigorous protest, how can it justly be burdened with the cost and expenses of this wrongful receivership in addition to its loss of the right to use its property for nearly five years.

If adversary counsel is right and there was no lack of jurisdiction, then it certainly cannot be denied that there was in fact a wrongful exercise of that jurisdiction because the decree of the Circuit Court of Appeals has conclusively adjudicated the fact that the appointment was wrongful. If that conclusion is reached then there could certainly have been no acquiescence on the part of the Company in the fact that its counsel failed to insist that there was a want of jurisdiction. In other words, the corporation urged every possible defense that adversary counsel now insists they had a right to make. It is an elementary principle that where receivers are wrongfully appointed and the appointment is not acquiesced in the property cannot be burdened with the cost of receivership.

*Beach v. Macon Grocery Co.*, 125 Fed. 513.

*Weston v. Watts*, 45 Hun. (N. Y.) 219

*Richmond v. Irons*, 121 U. S. 27.

*Wills Valley Mining Co. vs. Galloway*, 155 Ala. 628.

*Highly v. Deane*, 168 Ill. 467.

*Frence v. Gifford*, 31 Iowa 428.

*Wagner v. Railway*, 233 Pa. 114.

*Bellamy v. Telephone Co.*, 25 L. R. A. (N. S.) 412.

*Powell v. City of Louisiana*, 141 Fed. 960.

*Harrington v. Union Oil Co.*, 144 Fed. 235.

*Gluck & Beckers Receivers of Corporations* (2d Ed.)  
par. 100.

*Beach on Receivers* (Alderson's 2d Ed.) par. 119.

*In Re: Wentworth Lunch Co.*, 191 Fed. 821.

The case of *Palmer v. Texas*, 212 U. S. 118, does not militate against this well established rule. In that case not only was there an acquiescence in the appointment, but the receivers' expenses were ordered paid out of money they made in the operation of the receivership. The property was turned back to the owners without any burdens at all, and without any diminution in value. In other words, the owner's property that was wrongfully taken from it *was not burdened with one dollar of receivers' expenses*.

In the instant case the present situation of the property is admirably stated by adversary counsel in their *first* brief filed to sustain their objections to the granting of the Writ of Certiorari, which will be hereafter referred to. Of course the receivers have not funds with which to pay these expenses with which the property has been burdened.

### III.

**The Receivership has not Benefited the Corporation or  
Realized any Funds but has only Resulted in the De-  
preciation of the Corporation's Property.**

It is true that the Master to whom the receivers' accounts were referred reported as follows:

"4. The operation and conduct of this business under their receivership has resulted in benefit and profit to the stockholders and creditors to the amount of at least \$49,008.41 as shown by Exhibit 1 of April 11, 1924, a copy of which is attached hereto." (R. 428).

The question, however, was not referred to the Master by the order of reference (R. 304) and his conclusion thereon is of no importance.

It is also true that this report, notwithstanding the exceptions filed thereto, was confirmed by the District Court and that Court's decree confirmed by the Circuit Court of Appeals in the decree now under review. Although the action of the Special Master was assigned for error in the Circuit Court of Appeals, that Court discussed only the fundamental underlying question. This appears from its opinion (R. 581):

"The Corporation appealed assigning several errors, only one of which we shall discuss. This is error charged to the Court in allowing the administrative costs of the receivership in a case in which the Court had no jurisdiction to appoint receivers."

A comparatively brief reference to the Record will show the absolute unsupportability of this conclusion of the Special Master. Exhibit 1 referred to by him in the above quoted extract from his report is found at R. 429 and is a statement submitted by the accounting receivers. The first item is an alleged increase in

assets amounting to \$12,525.80 as taken from the receivers' balance sheet. (R. 294). This sheet shows a comparison of assets and liabilities between the balance sheet dated May 11th, 1922, the date when the receivers were appointed, and January 30th, 1924, the date of the account. The comparison is made, however, not only with the balance sheet of the corporation, but also with a reconstructed balance sheet to suit the contentions advanced by the receivers in the course of the testimony contained in the first half of this Record.

In drawing this reconstructed balance sheet the receivers instructed their accountant to eliminate such items as they, without any evidence or any judicial authority, considered should be eliminated. (R. 387-390). A comparison of the balance sheet with the reconstructed sheet of May 11, 1922, shows an increase in liabilities of \$61,335.44, and an increase in assets of \$73,861.24 showing the net increase alleged to exist as above mentioned. This is reached only by the use of the reconstructed balance sheet of May 11, 1922, and will not be found if the balance sheet as kept by the corporation is used. (R. 394). All that the receivers did do was to increase the inventory by \$9,368.90, pay off a mortgage on an adjoining piece of vacant land amounting to \$2,300.50, as against which notes and accounts payable were increased by \$63,272.49. It is true that the increase claimed shows an item of \$55,070.32 of increase in machinery. This exists only by taking as the starting figure that given in the reconstructed balance sheet and not in the actual balance sheet, and moreover, largely represents the

amount expended for replacements in the course of operation by the receivers.

The next item alleged to constitute profits is auditing and investigation which is fully discussed on page 31 of our main brief.

The next item, "Bonds and Insurance," represents the amount disbursed by the receivers for premiums on their bonds, fire insurance on the buildings during part of the receivership, and various other kinds of insurance covering the operation of the plant.

The item of "Old Accounts Paid For" amounting to \$7,920.15 is admittedly a benefit, as are the items of "Interest on Bonds," and "State of Delaware Tax," together amounting to \$480.00. The item of "Legal and Professional Expenses" is fully discussed on page 32 of our main brief, with which the account payable to Delaware attorneys amounting to \$4,000 should be assimilated. (R. 401, 371, 372).

The advertising items obviously are nothing but expenses incident to running the business which has now been discontinued for over four years. The item of "Custodians and Employees," May to July, represents simply the payroll for that period. How this statement is padded is obvious from the inclusion of the following two ridiculous items. In Accounts Payable, unpaid taxes for 1923, and in Bills Payable, the amount of royalty that would have been credited to Crossman's account. In support of the latter the receivers testified (R. 402) that they notified Mr. Crossman that they would not operate under his formula and would refuse to credit him with royalties

which theretofore had been credited to him on the corporation's books. He admitted that the question as to whether or not Mr. Crossman is nevertheless entitled to the royalties has not been judicially established. How can the fact that the receivers left the taxes for 1923 unpaid be a benefit conferred by them on the corporation?

We have seen that the balance sheets properly compared show a deficit rather than a surplus. The valid item of Old Accounts Paid Off is overcome by credits to the corporation. The most that can be said in favor of any of the other alleged benefits is that they are expenses of maintaining the plant. To maintain in statu quo is not to benefit.

The cases hereinbefore cited under point II establish the principle that against a benefit conferred by the receivership must be set off any deterioration of the property and the loss to the corporation by its deprivation of the use of its property.

Two outstanding considerations, however, more plainly than a detailed criticism of the receivers' accounts established the fact that the petitioner's property has not been benefited. First, is the present condition of the corporation's only asset, its factory property in Newark, N. J., which is well described on page 7 of the respondent's brief filed in this court October 27th, 1925, in opposition to the application for Certiorari:—

“The plant located in Newark, N. J., which constitutes all the assets has been shut down for

some time. It is constructed of wood, is filled with machinery *and daily deteriorating in value*. Since the order made in December, 1924, which was appealed and affirmed and which it is now sought to review, an indebtedness of upwards of \$4,500 has been created by the receivers for watchman's fees, taxes are accruing at the rate of approximately \$4,000 a year. The property has been uninsured since January, 1924. Interest on the certificates of indebtedness is accruing at the rate of \$1,500 per annum. The receivers have no fund to pay either taxes, watchman's fees or insurance."

Secondly, on top of this vacant, unprotected and deteriorated plant we have the receivers' indebtedness to raise which the order appealed from directs the property to be sold. This will be discussed in the next point.

#### IV.

#### **It is not to Meet the Cost of Benefits Conferred by the Receivers that the Petitioner's Property is Ordered Sold.**

The decree (R. p. 565) approves the disbursements shown in the receivers' account as a valid charge against the property; approves the indebtedness incurred by them as a valid lien upon the property; makes allowances to receivers, counsel and Special Master; directs that the property in default of the payment of the indebtedness and allowances by the corporation be sold by the corporation to raise the same. The figures are as follows:

Disbursements .....\$399,376.83 (R. 296)

#### INDEBTEDNESS

Accounts payable .....	27,292.32	(R. 298)
Receivers' certificates .....	25,000.00	(R. 430)
Receivers' allowances... \$25,000		
Less already rec'd. .... 8,150	16,850.00	
Counsel fee .....	10,000.00	
Master fee .....	500.00	

Total charge on property to raise  
which it is to be sold ..... \$ 79,642.32

Not a single item of the receivers' indebtedness represents a benefit to the corporation. The following items of disbursements, however, have been beneficial to the corporation, (R. 429)

Mortgage reduced .....	\$ 2,350.00
Interest on bonds paid .....	280.00
Delaware taxes paid .....	200.00
Real Estate Taxes paid .....	7,920.15
	<hr/>
	\$10,750.15

against which there had been received by the receivers moneys and inventory of the corporation not now represented by the property in their hands, totaling \$9,852.98. Difference \$897.17.

This is not really a net benefit because against it should be charged the tremendous deterioration of the buildings and enormous damage suffered by the com-



pany by not being able to transact business during a period of years including, it may be noted, two periods of coal strikes. This proposition is fully and excellently discussed by Judge Shelby in *Beach v. Macon Grocery Co. supra*.

## V.

### **The First Decision of the Circuit Court of Appeals is Not Now Open to Question**

Counsel for the respondents has cited no authority in support of his contention to the contrary. We refer to those cited on page 30 of our main brief.

The decree of the District Court under review was made after a final decree putting an end to the receivership. Conceding that were the case now here on certiorari to a final decree all prior interlocutory orders might be questioned, we feel that a review of proceedings under a mandate issuing upon the Circuit Court of Appeals' final decree does not open up the validity of that decree. The present respondents did not seek a review in this court of the first decree of the Circuit Court of Appeals. Now to say that that decree is erroneous and that this Court may revive the receivership is absurd. It is equivalent to saying that upon a review of proceedings in execution the validity of the judgment upon which the execution issued may be attacked.

## VI.

**The First Decree of the Circuit Court of Appeals  
Was Right.**

This is not a suit by a local creditor who is asking the Court to apply the local property of the Corporation to meet its debts. We have here a fight between stockholders of a new going concern. On the side of the complainant were arrayed 54,550 shares of common stock owned by approximately 157 stockholders. On the other hand we have 487,647 shares of common stock owned by 32 persons. Excluding Mr. Crossman we still have on the defense 87,647 shares. We exclude on both sides any reference to preferred stock. The corporation is the sole defendant. No officer or director is made a party defendant nor is there any clause to satisfy Equity Rule 27. It is simply an effort by a dissatisfied minority to substitute the judgment of the Court and its receivers for the judgment of the board of directors and to have the Court through its receivers and by its orders manage the corporation, wind it up, marshal its assets and distribute them not only in effect but by the express request of the Prayer of the Bill and the orders of July 13th and December 22nd. The suit is under the New Jersey Corporation Act as supplemented and amended. The Court below, therefore asserted jurisdiction to take charge by an original bill and appoint receivers and through them wind up at the suit of a stockholder a foreign corporation insolvent. The question is, has the Court any such jurisdiction?

### Independently of the Statute of New Jersey

It is very well settled that independently of a state statute, a federal court will not entertain a bill at the suit of a stockholder, against a foreign corporation, for the appointment of a receiver, to wind up its affairs and distribute its assets, even though the assets may be within its jurisdiction. *Maguire vs. Mortgage Co. of America*, 203 Fed. 858 (C. C. A., 2, 1913). This was a suit brought in this District Court of the United States for the Southern District of New York by a minority stockholder against a Delaware corporation. The District Court denied a motion to vacate an order appointing a receiver, but on appeal, the Circuit Court of Appeals reversed and remanded, with instructions to dismiss the bill for want of jurisdiction. Noyes, J., said at page 858:

"The present suit is by a minority stockholder charging that the assets of the defendant corporation are within the jurisdiction; that only its president has qualified as an officer and that lawsuits are threatened, and praying for the appointment of a receiver and 'that the assets of the company after the payment of its just debts be applied to the payment of such proportion which the stock of the plaintiff and other shareholders similarly situated are justly entitled to.' There is no averment of insolvency. The order involved in this appeal appoints a 'temporary receiver' but confers upon him the general powers of receivers.

. . . . .

But this is not the case of a domestic corporation. The defendant corporation exists under the laws of the State of Delaware and it is elementary that it is alone for the state which creates a corporation to provide for its dissolution and winding up. A federal court of equity has no jurisdiction over an original stockholder's suit against a foreign corporation for the appointment of a receiver to wind up its affairs and distribute its assets. *Republican Mountain Silver Mines v. Brown*, 58 Fed. 644, 7 C. C. A. 412, 24 L. R. A. 776; *Sidway v. Missouri Land & Live Stock Co.* (C. C.) 101 Fed. 481. See also cases *post*.

But it is urged that all the assets of the corporation are within this jurisdiction and that they may be wasted unless a receiver is appointed here. Well-established equity procedure provides for just such a situation. When a stockholder's suit has been brought in the courts of the state which created the corporation and a receiver has been appointed there, the federal courts in other states will protect property within their jurisdictions by the appointment of ancillary receivers. *Parks v. U. S. Bankers' Corp.* (C. C.) 140 Fed. 160; *Haydock v. Fisheries Co.* (C. C.) 156 Fed. 988; *Hutchinson v. American Palace Car Co.* (C. C.) 104 Fed. 182."

This case has frequently been cited with approval by other courts, including the Supreme Court of the United States in *Hartford Life Insurance Co. v. Ibs*, 237 U. S. 662, at 671.

*Brietson Manufacturing Co. vs. Close*, 280 Fed. 297 (C. C. A., 8, 1922). This suit was brought in the District of Nebraska, by stockholders of a South Dakota corporation alleging misconduct by the management

of the corporation, alleging that the corporation was insolvent, and praying for the appointment of a receiver. The bill alleged the appointment of a receiver was necessary to protect the company's assets, prevent waste and reckless extravagance, and to administer the company's affairs in an honest, business, and impartial manner, until such time as the stockholders might determine and assert their wishes as to whether the company should be liquidated or conducted under efficient management, or reorganized, or some other steps taken. The District Court appointed a receiver. The Circuit Court of Appeals reversed that order with directions that the receiver return all property in his hands; that he be thereupon discharged and the bill dismissed, with costs.

## B

### **Under the Statute of New Jersey**

The following sections of the New Jersey statute entitled "An Act Concerning Corporations (Revision of 1896)", as supplemented and amended, are material. Section 65, as amended by P. L. (1912), 535:

"Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receiv-

ers or trustee or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order.

#### Section 66:

“The court of chancery, at the time of ordering said injunction, or at any time afterwards, may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation with full power and authority to demand, sue for, collect, receive and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his or their discretion

to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible at law or in equity to the corporation at the time of its insolvency or suspension of business, or afterwards, upon such terms and in such manner as he or they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; a debtor who shall have in good faith paid his debt to the corporation without notice of its insolvency or suspension of business, shall not be liable therefor, and the receiver or receivers or trustees shall have power to sell, convey and assign all the said estate, rights and interests, and shall hold and dispose of the proceeds thereof under the directions of the court of chancery; the word receiver as used in this act shall be construed to include receivers and trustees appointed as provided in this act."

Section 96:

"Foreign corporations doing business in this state shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations."

The extent to which Section 96 gives the courts of New Jersey power over foreign corporations doing business in this state, has been well defined by a long line of cases in the Court of Chancery and the Court of Errors and Appeals.

*National Trust Company vs. Miller*, 33 N. J. Eq. 155 (Van Fleet, V. C., 1880). This was a foreclosure suit

in which the receiver of the mortgagor, a foreign corporation, answered, attacking the mortgage as being in fraud of creditors. In discussing the power of the receiver of such foreign corporation, the Vice Chancellor said at page 159:

“By express provision, foreign corporations, doing business in this state, are made subject to all the provisions of our statute concerning corporations, so far as the same can be applied to foreign corporations. Rev. 196 § 103. The design of this enactment seems to me to be very plain. The legislative design was, unquestionably, to confer upon this court the same powers, in respect to *insolvent* corporations, created by foreign jurisdictions, having property in this state, that it exercised over insolvent domestic corporations, *so far, at least, as the exercise of such powers was necessary to the recovery of any assets whether legal or equitable, which should go in discharge of debts.*” (Italics ours.)

*Minchin vs. Second National Bank*, 36 N. J. Eq. 436 (Runyon, C., 1883). A bill was filed in the Court of Chancery by a creditor and stockholder of a New York corporation, against the corporation and two individual defendants. Such proceedings were had as resulted in a decree for an injunction, and the appointment of a receiver, under the then New Jersey Corporation Act. After the filing of the bill, and before the appointment of the receiver, the Second National Bank sued out an attachment against the corporation, under which a levy was made. After the appointment of a receiver, one of the individual defendants, the president of the corporation, caused the corporation's appearance to be entered in the attachment suit, there-



by, under the New Jersey Attachment Act creating a preference in favor of the plaintiff-in-attachment, and such creditors as had then come in as applying creditors. A bill was then brought by the same creditor and stockholder to enjoin proceedings under the attachment, to which a demurrer was filed. The Chancellor held:

1. That the complainant had no standing as the suit should be, if at all, maintained by the receiver.
2. Even if brought by the receiver, the suit would not be maintainable, because the corporation was a foreign corporation.

The Chancellor said at page 440:

"But further, apart from this objection, the suit cannot be maintained on the merits of the case as presented by the bill, if it had been brought by the receiver. The act concerning corporations makes the remedies thereby provided in case of insolvency applicable to foreign corporations, so far as practicable. Its language is, that foreign corporations doing business in this state shall be subject to all provisions of the act, so far as they can be applied to such corporations. Rev. P. 196 § 103.

Obviously, there are provisions of the act which cannot be applied to such corporations; for example, this court cannot hinder such corporations from exercising their franchises, except as it may enjoin them from exercising them in this state. It can sequester their property here and administer it for the benefit of creditors and stockholders, but it can do but little more. A foreign corpora-

tion coming into this state and doing business here is indeed liable here on its contracts made here, but the question under consideration is not a question of liability to suit. It is a question of power over the property of the foreign corporation to administer it for the benefit of creditors and stockholders. As to the power of this court over the corporate existence or the exercise of its franchises, that has already been adverted to. The only question for consideration is, as to the character and extent of the power over the corporate property, for the purpose of administering it for the benefit of creditors or stockholders residing here. In the language of the New York Supreme Court, in *De Bemer v. Drew*, 57 Barb. 438, this court cannot regulate the internal affairs of foreign corporations, nor enforce any remedy beyond the limits of this state; it cannot annul or forfeit their charters, but it can and ought to provide for the collection of debts against them, when they or their property are brought within the jurisdiction of the courts of this state. The foreign corporation doing business here is subject to the provisions of our statute, so far as its property in this state is concerned. The proceeding is, practically, merely a proceeding in rem, and as such must be subject to prior liens, created by prior proceedings in attachment and the vigilant creditor who obtains such prior lien at law ought not to be, and cannot be, deprived of his advantage."

*Jackson vs. Hooper*, 76 N. J. Eq. 185 (*Howell, V. C.*, 1909). The complainant and defendant were the sole persons beneficially interested in two foreign corporations, one English, and one an Illinois corporation. The bill alleged an agreement between the defendant and the complainant, by which the business of both corporations, and some other business was to be treat-

ed as a partnership. The bill alleged that the dummies on the board of directors of each of the two corporations were cooperating with the defendant to violate this agreement, and prayed, among other relief, an injunction to compel the performance on the partnership basis claimed. The Vice Chancellor held that there was no partnership, but that there was a joint adventure, and advised an injunction. On appeal, the Vice Chancellor was unanimously reversed, 76 N. J. Eq. 597. Dill, *J.*, for the Court said at page 597:

"He granted an injunction which, although reciting that nothing therein should 'interfere or be deemed to interfere with the integrity or autonomy of the two corporations mentioned in the bill of complaint, to wit, Hooper and Jackson, Ltd., an English corporation, and the Encyclopaedia Britannica Company, an Illinois corporation, or either of them, or to interfere with the business or property of either of said corporations, *except as herein specifically stated*' forthwith proceeds to enjoin the defendants, who, with the complainant, constitute the entire boards of directors of the English and Illinois corporations, from transferring any of the shares of stock therein, from withdrawing from the business of the complainant and Hooper or 'from any one of the bank accounts of the said business, in whatever name the same may be, any money or moneys for the private or personal use of the defendants \* \* \* or otherwise than in the payment in the ordinary course of business', except that such defendants as are employes may receive their respective salaries. He further issued a mandatory injunction that the complainant and the defendant Horace E. Hooper may withdraw such sums for their private use as they may mutually agree upon, or in absence of an agreement between them, that each

may draw \$5,000. per month; that either complainant or said Hooper shall have the right to sign checks for such amount, except that any debt of the business may be paid out of the funds thereof in whatever name standing."

at page 604:

"Finally, the court of chancery had no jurisdiction to issue the injunction in question. The court assumed to exercise visitorial powers over two foreign corporations which are not parties to this suit and to regulate the management of their internal affairs. The phrase 'internal affairs of a corporation' as here used, is well defined in the case of *North State, &c., Mining Co. vs. Field*, 64 Md. 151, as follows:

"Where the act complained of affects the complainant solely in his capacity as a member of the corporation, whether it be as stockholder, director, president or other officer, and is the act of the corporation, whether acting in stockholders' meeting or through its agents, the board of directors, then such action is the management of the internal affairs of the corporation, and in case of a foreign corporation our courts will not take jurisdiction."

*The courts of this state do not possess such jurisdiction, and any suggestion of its assumption we emphatically repudiate.*

"An injunction which enjoins the directors of a corporation as individuals, but with respect to corporate affairs, is an injunction against the corporation" (Italics ours).

at page 605:

"It is unnecessary to analyze again the terms of the injunction in referring to its extraordinary scope and effect.

In a form, sweeping, mandatory and embodying the ingenious theory of the complainant, the injunction, while purporting not to disturb or interfere with the integrity and autonomy of the foreign corporations, but only to enjoin the individuals from transferring property of an extensive business having its situs in foreign states, does, in fact, substance and effect, regulate and control the internal affairs of corporations chartered by foreign sovereignties and prevents freedom of action on the part of corporations not made parties to the suit, which we have held to be distinct legal entities and controlled by foreign laws. In violation of every obligation of official duty and responsibility imposed by law upon officers and directors, it substitutes the will of the chancellor for deliberate corporate action.

Such assumption of power cannot be approved or tolerated without a complete destruction of equitable doctrine as applied to corporations, and a subversion of the law affecting corporate rights, duties and relations."

and at page 606:

"We hold \* \* \* that the whole subject-matter of the controversy relates to, and the injunction attempts to regulate, the management of the internal affairs of two foreign corporations; that the court of chancery has no jurisdiction to entertain the bill and that the injunction and all proceedings thereunder should be vacated and

held for naught."

Counsel for the respondent lays great emphasis upon the amendment of 1912. The following cases arose after that amendment:

*McDermott vs. Woodhouse*, 87 N. J. Eq. 124 (Backes, V. C., 1916). This was a bill by the receiver appointed by the New Jersey Court of Chancery of an insolvent foreign corporation to recover from the defendant an unpaid stock subscription. The defendant moved to strike out the bill on the ground that the Court was without jurisdiction; that such proceedings could be taken only in the state in which the corporation was organized. This motion was denied, and the defendant appealed. The Court on Errors and Appeals unanimously reversed the Vice Chancellor, 87 N. J. Eq. 615. Swayze, J., said for the Court, at page 616:

"The bill is a most extraordinary one. It is a bill filed by a receiver in insolvency of a New York corporation, who was appointed by our court of chancery, and seeks to establish a stockholder's liability for stock issued for property purchased, as is said, at a gross overvaluation. We pass over the informal statements contained in the bill, and put upon it the best face possible.

\* \* \* \* \*

We mention these difficulties because they are of so fundamental a character that we ought not to pass them unnoticed and thereby appear to justify what seems by the averments of the bill to have been an unwarranted interference by our

courts in the internal affairs of a foreign corporation. Probably the proceedings for a receiver were *ex parte*, and the attention of the court was never called to the fact that the corporation was not a New Jersey corporation. The matter is important. The bill seeks to do what can only be done by a receiver in case he possesses all the powers of a statutory receiver in insolvency, and shows on its face that the utmost powers he could have would be those of a mere ancillary receiver to gather in the assets in this state.

\*     \*     \*     \*     \*

Since this is the limit of the stockholder's obligation, it follows that the amount must be ascertained by a tribunal which has the power to ascertain the total amount of the debts and the total amount of the assets of the corporation. This cannot be done in a forum where only an ancillary receivership is possible. It must be done in the form of the domicile. The bill in the present case, indeed, sets up an attempt to compel creditors to bring in their claims and the entry of an order barring creditors in the insolvency suit. As far as we know, the only authority for such a proceeding is section 75 of the Corporation act (Comp. Stat. p. 1648); but this can only apply to a New Jersey corporation; our courts cannot force a New York corporation to submit his claim to our tribunals under penalty of losing all right to participate in the distribution of the assets. It is manifestly quite as necessary to ascertain the total assets of the corporation as its total liabilities in order to fix the amount needed to pay creditors, and these assets can only be finally ascertained in the courts of the domicile to which assets may be remitted by courts of other forums acting through ancillary receivers, as in *Irwin v. Granite State Provident Association*, 56 N. J. Eq. 244."

*In Atwater vs. Baskerville*, 89 N. J. Eq. 121 (Lane, V. C., 1918), relied on by counsel for the respondents, the foreign corporation was insolvent. The Vice Chancellor held that the Court of Chancery had jurisdiction to appoint a receiver of an insolvent corporation doing business in New Jersey, although no receiver had been appointed at the corporation's domicile, and that the relief prayed did not involve an interference with the internal affairs of such corporation. On appeal, he was affirmed by the Court of Errors (90 N. J. Eq. 275) in a brief opinion which said:

"The order appealed from is affirmed. The opinion of the vice-chancellor sufficiently vindicates his result. We have only to add that *McDermott v. Woodhouse* did not hold anything to the contrary. It expressly recognized the power of our courts to gather in, and control the disposition of, the assets of a foreign corporation found within this state. *Irwin v. Granite State Provident Association*, 56 N. J. Eq. 244. It happened in the last-cited case that there was also a domiciliary receiver, but, obviously, that was not a condition precedent to the appointment of a receiver in this state to secure or preserve the assets."

It cannot be contended, therefore, that this case has any application to the case of a foreign corporation not insolvent.

*Goff vs. Goff Electric, etc., Co.*, 89 N. J. Eq. 258 (Leaming, V. C., 1918). The decision of this very important case appears from the following passages from the opinion of the Vice Chancellor:



"The bill herein is filed by complainants as stockholders and creditors of the Goff Electro Pneumatic Brake Company, a corporation of the State of Delaware, and prays for an injunction restraining that corporation and its officers and agents from exercising any of its privileges or franchises or transacting its business, and for the appointment of a receiver of that corporation. The bill discloses corporate assets in this jurisdiction and charges not only neglect of duty upon the part of the officers and directors of the corporation, but also wrongful diversion of assets by them, and alleges that the business of the corporation is being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and that its business cannot be continued with safety to the public and advantage to the stockholders.

. . . . .

The bill does not allege that defendant company is insolvent. It alleges that its assets are \$18,000, of which \$10,500 is cash, and its liabilities about \$4,000. The allegation of danger of future insolvency is based upon the claim that nothing is being done to promote the interests of the company and no revenues are being received, while its expenses are \$250 per month for salaries. The answer discloses as assets cash to the amount of \$8,289.38, bills receivable of the nature of quick assets to the amount of \$1,791.55, and the patents which were made the basis of the capitalization of the corporation, and denies that it has liabilities to the amount of \$4,000; its total expenses are stated as \$300 per month, including rent. It accordingly is clear that a condition of insolvency neither exists nor is presently threatened. In the adjudication of applications for the appointment of receivers of corporations, the court of chancery

of this state is required to observe certain well-defined limitations upon the exercise of that power. The statutory power found in our Corporation act has reference only to corporations which are actually or potentially insolvent. Section 96 of that act subjects foreign corporations doing business in this state to the provisions of the act, so far as they can be applied to foreign corporations; *accordingly in the appointment of receivers of foreign corporations that section can only be understood to contemplate insolvent foreign corporations.* And, as is pointed out in *Minchin v. Second National Bank*, 36 N. J. Eq. 436, there are provisions of the act relating to insolvent corporations which obviously cannot be applied to insolvent foreign corporations, since the court of chancery of this state cannot prevent a foreign corporation from exercising its franchises in another state. As there stated it can, under our statute, through the medium of a receivership, sequester the property in this state of an insolvent foreign corporation and administer it here for the benefit of creditors and stockholders but it can do but little more; thus the efficacy of the provisions of section 96 of our Corporation act, so far as it relates to receivers of foreign corporations, is confined to securing to creditors and stockholders, citizens of this state, a just proportion of the property in this state of foreign corporations when insolvent. See, also, *Albert v. Clarendon Land Co.*, 53 N. J. Eq. 623. Whether under our statute a receiver of an insolvent foreign corporation may be appointed without an adjudication of insolvency first being made in the state of the domicile of the corporation, need not be here considered. See *McDermott v. Woodhouse*, 76 N. J. Eq. 615. It follows that any relief that may be herein awarded to complainant must emanate from the general powers of this court.

The recent case of *Morse v. Metropolitan Steamship Co.*, 87 N. J. Eq. 217, reviews at some length the circumstances which may appropriately call into activity the general powers of a court of equity to appoint a receiver of a solvent domestic corporation. *But, as already stated, the present application is for the appointment of a receiver of a solvent corporation of another state and for an injunction restraining the corporation and its officers and directors from exercising any of its privileges or franchises. It is clear that the measure of relief here sought cannot be properly awarded, even though the verified denials and affirmative averments of the answer be wholly disregarded. Not only is this court unable to enforce a decree of that nature out of this state, but such decree, could it be enforced, would clearly be operative to regulate the management of the internal affairs of a foreign corporation, since it would wholly deny to that corporation the exercise of its corporate functions. Jackson v. Hooper, 76 N. J. Eq. 592, 604. Nor does it seem that any lesser degree of relief can be here administered in behalf of complainants with due regard to the rule that a court should not take jurisdiction of the internal affairs of a foreign corporation."*

*Eckrode vs. Endurance Tire, etc., Co.*, 90 N. J. Eq. 129. The decision of this case appears from the opinion of the Vice Chancellor, which is copied in full:

"This bill alleges that complainant is a resident of this state and the owner of five hundred shares of the common stock of the defendant, the Endurance Tire and Rubber Corporation of New York (a New York corporation authorized to do business in this state), transacting such business in the city of New Brunswick.

Complainant files his bill for the benefit of himself and all other stockholders of this corporation, and seeks to have a deed and bill of sale for the corporation's real and personal property in this state, made on December 5th, 1918, by this corporation to the defendant, the Hardman Rubber Corporation (a corporation of the State of Delaware, also authorized to do business in this state), declared illegal and void; and also seeks to have declared illegal and void a certain mortgage of like date, covering the property so transferred and conveyed, made by the Hardman Rubber Corporation to Arthur W. Rinke, as trustee, to secure an issue of bonds amounting to \$210,000, claimed to have been given in exchange, or as a consideration for the deed and bill of sale. And the bill also asks for the appointment of a receiver for the Endurance Tire and Rubber Corporation on the allegation that it was unable to meet its obligations and was insolvent at the time of the conveyance and transfer of its property.

The attack upon the sale and transfer of the property rests upon the claim that the action of the Endurance Tire and Rubber Corporation in making the same *ultra vires*, and this contention is based upon the allegations (1) that such sale and transfer was not sanctioned by the consent of ninety-five per cent. of the capital stock of the Endurance Tire and Rubber Corporation, as required by section 16 of the Stock Corporation law of the State of New York (Com. L. of 1909, ch. 61), as complainant, who is the owner of more than five per cent. of such capital stock, did not consent to such sale; (2) that notice of the meeting of the stockholders at which the resolution authorizing the sale was adopted was not given as required by sections 16 and 25 of the Stock Corporation law of New York, and (3) that the corporation being unable to meet its obligations could

not, under section 66 of this law, transfer any of its property to any of its officers, directors or stockholders . . . except for the full value of the property paid in cash; but there is no allegation that the Hardman Rubber Corporation comes within this prohibition.

The bill further alleges that the conveyance and transfer includes all the real estate and tangible personal property owned by the Endurance corporation, and that both this real and personal property are located in this state.

Complainant invokes this court's jurisdiction on the ground that he is a resident of the state and that the property in question is located therein; and defendants contend that the court is without jurisdiction as the controversy is between a stockholder and the corporation and its directors, and relates to the internal affairs of a foreign corporation.

Chancellor Runyon, in *Gregory v. Railroad Co.*, 40 N. J. Eq. 38, remarked that it is obvious that this court cannot regulate the internal affairs of foreign corporations; and in the latter case of *Jackson v. Hooper et al.*, 76 N. J. Eq. 592, the court of errors and appeals hold to the same effect, and adopt the definition of the phrase 'internal affairs of a corporation' given in the case of *North State, &c. Mining Co. v. Field*, 64 Md. 151, where it was held that—

'When the act complained of affects the complainant solely in his capacity as a member of the corporation, whether it be as stockholder, director, president, or other officer, and is the act of the corporation, whether acting in stockholders' meetings or through its agents, the

board of directors, then such action is the management of the internal affairs of the corporation, and in case of a foreign corporation our courts will not take jurisdiction.'

The bill does not charge the officers or directors of either of the corporations with any fraudulent conduct; and it appears that the corporate acts complained of affect complainant solely in his capacity as a member-stockholder of one of the corporations, and that individually he has no relation to either of them independent of his relationship as a stockholder in the Endurance Tire and Rubber Company. Applying to this situation the definition of the phrase 'internal affairs of a corporation', approved in *Jackson v. Hooper*, *supra*, and the tests quoted from 12 Rul. Cas. L. §§ 20, &c. by Vice-Chancellor Lane in *Atwater v. Baskerville*, 89 N. J. Eq. 121, it is clear that the mere fact that complainant is a resident of this state, and that the property to which the corporate action relates is situate therein, are not in themselves sufficient to justify this court in assuming jurisdiction.

The allegation of the insolvency of the Endurance Tire and Rubber Company is too general to warrant the appointment of a receiver, assuming this court has the authority to appoint a receiver for a foreign corporation (*Atwater v. Baskerville*, *supra*); and as there are no other facts in the case that will justify the court in assuming jurisdiction, I will advise that the bill be dismissed."

The complainant appealed, and the Court of Errors and Appeals, affirmed Vice Chancellor Foster, on his opinion, 91 N. J. Eq. 153.

The conclusions to be drawn from the foregoing line of cases are very plain:

1. At least at the suit of a New Jersey creditor, the Court of Chancery will appoint a receiver, pursuant to Section 96 of the New Jersey Corporation Act, for an insolvent foreign corporation doing business, and having property in New Jersey, whether or not a receiver has been appointed in the state under the laws of which the corporation exists.
2. The Court will not appoint a receiver at the suit of a stockholder of a foreign corporation which is not insolvent.
3. The Court will not, and is without jurisdiction, either by the appointment of a receiver, or by injunctive decree, to interfere with the internal affairs of a foreign corporation.

Do not these decisions fully sustain the first decision of the Circuit Court of Appeals?

A reading of the powers given to the receivers in the order of July 13th (R. 252) will show an almost verbatim copy of Section 66. The last paragraph of the order of December 22nd (R. 254) expressly refers to the New Jersey statute. Consider, for a moment, the effect of this statutory injunction, and statutory receivership, upon the internal affairs of a New Jersey corporation. The corporation, its officers and agents, are enjoined from exercising, any time or anywhere, any of the franchises of the corporation. Its directors

cannot meet; its stockholders cannot meet; the corporation cannot, without violating the injunction, perform any of the corporate acts, which it is expressly authorized to perform by the laws of Delaware, to which it owes its existence. No more sweeping injunction is issued under the statute by the New Jersey Court of Chancery against a New Jersey corporation, and no more thorough-going control is exercised by the New Jersey Court over a New Jersey corporation, by the issuing of the injunction and appointment of a receiver, than has been done in the case at bar. Such an exercise of control, not limited to the assets within the State of New Jersey, or to corporate action within that state, certainly interferes with the internal affairs of the defendant.

Indeed, any bill by a stockholder complaining of the management of the corporation by its officers and directors, and seeking to have that management corrected by a receiver of the court, and by the court acting directly through its injunctive decrees, necessarily interferes with the internal affairs of the corporation. The conduct of the corporation's business, the making of contracts by its officers and directors, the issuing of stock for this purpose, and that purpose, are all the internal affairs of the corporation. The complainant complains of all such matters in this case, and has persuaded the court below, by its receivers, and by its injunction decrees, to interfere with those matters. A clearer case of the interference in the internal affairs of a foreign corporation could not be imagined. The case is well within the definition of internal interference laid down by the New Jersey Courts in *Jackson vs. Hooper* and *Eckrode vs. Endur-*



*ance, etc., Corporation of New York, supra.* The New Jersey courts, under the authority of those two cases, and the other cases, hereinabove cited, would surely hold that they had no jurisdiction to make the decrees, or appoint the receivers, as has been done by the court below. For that reason, the court below was without jurisdiction.

Independently of the interference with the internal affairs, it is the established doctrine of the New Jersey courts that they will not appoint a receiver for a *solvent* foreign corporation. *Goff vs. Goff, etc., Co., supra.* The decrees in the case at bar are careful in adjudging that the defendant is not insolvent. On that ground, also, the state courts are without jurisdiction.

There is, therefore, nothing in the law of New Jersey, which gives the court below the power or jurisdiction it purported to exercise. It follows, therefore, necessarily, that this court should reverse the decree appealed from, with directions to discharge the receivers, and dismiss the bill.

Wherefore, it is respectfully submitted that the decree under review must be reversed.

JAMES J. LYNCH,  
 GEORGE W. C. McCARTER,  
*Counsel for Petitioners.*

**RESPONDENT'S**

**BRIEF**

Office Supreme Court, U.

FILED

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WM. R. STANSBURY  
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1926.

No. 227.

**BURNRITE COAL BRIQUETTE COMPANY,**  
*Petitioner,*

*and*

**EDWARD G. RIGGS, ALFRED L. KIRBY and JOHN  
P. DUFFY, as Receivers of Burnrite Coal Briquette  
Company,**

*Respondents.*

On Writ of Certiorari to the United States Circuit Court  
of Appeals for the Third Circuit.

**BRIEF FOR RESPONDENTS.**

**MERRITT LANE,**  
*Of Counsel with Respondents.*

**JOSEPH L. SMITH,**  
*Of Counsel.*



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IN THE  
**Supreme Court of the United States**

October Term, 1926.

No. 227.

BURNRITE COAL BRIQUETTE COMPANY,  
a corporation,

*Petitioner,*

*and*

EDWARD G. RIGGS and ALFRED L. KIRBY  
and JOHN P. DUFFY, as receivers  
of Burnrite Coal Briquette Company,  
*Respondents.*

*On Writ of  
Certiorari to  
the United  
States Circuit  
Court of  
Appeals for the  
Third Circuit.*

**BRIEF FOR RESPONDENTS.**

(Italics, etc., except where otherwise noted are ours.)

**STATEMENT OF THE CASE.**

**A. History of Proceedings.**

Burnrite Coal Briquette Company was a corporation of Delaware with all its property and assets within New Jersey. It had some 4,500 stockholders, scattered throughout the United States. Its president was Francis M. Crossman, who has been charged, throughout these proceedings, with having manipulated the corporate business for his own benefit, and against the interests of stockholders and creditors. These charges have not been successfully denied nor was the decree of the District Court made on the 13th of July, 1922 (p. 252) adjudicating that "the business of the defendant corpo-

ration has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and that the business cannot be conducted with safety to the public and advantage to the stockholders" (p. 252) disturbed upon any issue of fact.

On May 11, 1922, a stockholder, resident of New Jersey, filed a bill in the District Court for the District of New Jersey, against the company, which bill alleged, within the meaning of section 65 of the Corporation Act of New Jersey, 2 C. S. of N. J., page 1640, which reads as follows:

"Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receivers or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order."

that the company was insolvent (paragraphs 6, 7, 8, 9, 10 and 11; *Wright v. American Finance and Securities Co.*,

85 N. J. E. 181, 183), and that the business had been conducted at great loss, etc.

It set forth *two* grounds for the appointment of a receiver under the statute. It also appealed to the general jurisdiction of the Federal Court, in equity, independent of any statute. *Scattergood v. American Pipe and Construction Co.*, 249 Federal 23; *Morse v. Metropolitan Steamship Co.*, 87 N. J. E. 217, affirmed 88 N. J. E. 325; *in re N. J. Refrigerating Co.*, 95 N. J. Eq. 215, at 221.

Upon the filing of the bill, May 11, 1922, an order was made appointing temporary receivers (p. 19), giving them power to continue the business, incur indebtedness, issue receivers' certificates and calling upon the corporation to show cause at a later day why the receivership should not be continued.

On May 18, 1922, the corporation filed a petition (p. 23) alleging its solvency, and praying for a modification of the order. No question was raised as to the jurisdiction of the court. On the filing of that petition an order to show cause was made (p. 40), and the powers of the receivers were, to some extent, restricted as to the examination of books and records of the company.

On May 29, 1922 (p. 68) this restriction was lifted.

On June 5, 1922, the corporation filed its answer (p. 69), in which it set up that it was not insolvent and that its business was not being conducted at great loss, etc., thereby *denying the facts stated in the bill*.

It raised no question of the jurisdiction of the court except by the third paragraph (p. 69), in which it denied the jurisdiction of the court "because neither the complainant nor the defendant is a citizen or resident of the State of New Jersey." This was intended to invoke section 51 of the Judicial Code. That objection had been

waived by the filing of the petition to vacate the order of May 11, 1922.

*Pusey & Jones Co. v. Hans Karluf Hanssen*, 261 U. S. 491, 67 L. Ed. 763.

And counsel on the argument upon the return of the order to show cause in his brief, expressly waived it.

After the argument the District Judge filed a memorandum (p. 249). He found, as a fact, that the business had been and was being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, and that further prosecution of business by it would tend to the sacrifice, injury and depreciation of its assets and the rights of stockholders and creditors.

In the argument counsel for the corporation had insisted that the court could not, on a summary hearing, appoint permanent receivers as the Court of Chancery might have done under the provisions of the New Jersey statute. The court, therefore, continued the temporary receivers pending the further hearing of the cause.

On July 13, 1922, an order was made which continued the receivers with all the powers granted by their order of appointment of May 11, 1922, including power to continue the business.

From the proofs before the court at the time of the making of this order it also appeared that the corporation was hopelessly insolvent.

With respect to the power of the court to, on final hearing, appoint a receiver upon the ground that the business of the corporation had been and was being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders, etc., counsel for the corporation, who had been a member of the Circuit Court of Appeals, Mr. Haight, said:

“There is a decided difference between a corporation which has become insolvent and one which

is not insolvent but whose business has been carried on at a loss. A Federal Court has, therefore, no right to appoint a receiver of a corporation whose business is simply being carried on at a loss, but which is not insolvent, unless it be by virtue of the New Jersey statute. The first question that presents itself on this branch of the case is, therefore, whether a Federal Court, sitting in New Jersey, may execute that provision of the New Jersey statute, except, of course, by consent. Although opposed to the interests which we represent in this case, frankness compels us to take the position that at a proper time, *i. e., upon final hearing, a Federal Court may execute such a right, because it is one essentially equitable in its nature and is, in reality, but an enlargement of the general right which has always been exercised to, on the application of a proper party, wind up the affairs and administer the property of an insolvent corporation.*"

No appeal was taken from this order.

On December 22, 1922, the final hearing came on. There was no argument. The case was submitted upon the record made upon the hearing upon the preliminary application. Thereupon, the District Court made a decree (p. 254) by which it adjudged—

"that the affairs of said corporation have been grossly mismanaged by the president and by the board of directors, and that the control of a majority of the voting stock of said company is in the officers and directors who have been mismanaging the said corporation, and, that, within the meaning of an act of the State of New Jersey entitled, 'An act concerning corporations,' revision of 1896, and its amendments and supplements, the business of the corporation has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors and stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders under the present

management, and that, for the reasons aforesaid, the receivership herein established should be continued."

It was further adjudged that "said corporation is not insolvent."

**B. As the record shows the corporation was, in fact, insolvent.**

The corporation had been manipulated throughout for the benefit of Crossman alone. He received a controlling interest in the company for a formula which has not been used. Notwithstanding that he received a controlling interest for a formula neither the corporation nor its subsidiaries or licensees can manufacture anything without paying him a royalty. The corporation parted with its right to manufacture in Perth Amboy to a New Jersey corporation and got in exchange one-half of the capital stock of the New Jersey corporation and an agreement of the New Jersey corporation to pay royalties *to Crossman*. This New Jersey corporation had no assets except its right to manufacture under the licenses of the defendant and its contract to purchase a plot of ground for \$100,000 from Crossman for which he had paid \$68,000. At the date of the appointment of the receivers Crossman contemplated the corporation entering into a contract with a common law trust of Pennsylvania under the terms of which defendant corporation would part with its right to manufacture in the States of New York, New Jersey, Maryland, Pennsylvania and Massachusetts for one-tenth of the capital stock of this common law trust, and an agreement upon the part of the common law trust to pay royalties *to Crossman*. The stock of the company sold netted to the company seventy or eighty cents, whereas it had been sold on the market, through the Burnrite Coal sustain the allegations of the bill, and that the District share. The company, three months before the receiver-



ship, encumbered its property with a \$100,000 mortgage to secure an issue of bonds and Crossman and his wife and the Shamokin Valley Sales Corporation, owned by Crossman, and the Burnrite Coal Service Corporation held \$48,600 of the bonds to secure alleged debts due to them of \$36,415.90. Only 5,000 of these bonds were sold, although Crossman said that the purposes of the bond issue was to raise money to pay *current expenses*. The coal dust was furnished by Burnrite Coal Service Corporation at an exorbitant price and that corporation was owned by a half-brother of Crossman. Notwithstanding the agreement to accept royalties in lieu of salaries Crossman's board of directors voted him 10,000 shares of stock for services rendered and the directors voted themselves an equal or greater amount of stock. And lastly the president of the company, Crossman, in these proceedings made false and misleading statements.

The worthless securities of the Burnrite Coal Briquette Company of New Jersey had been used for the purpose of paying dividends upon the preferred stock of the Burnrite Coal Briquette Company, the present defendant, although that company never made a dollar, for the purpose apparently of stimulating stock sales.

### **The proofs showed actual insolvency.**

On the date of the appointment of the receivers the cash balance of the corporation was \$138.75 (p. 42). There was not sufficient moneys to meet the payroll which the defendant company had incurred prior to the appointment (p. 42). Creditors had been demanding payment (p. 42). It was not possible to operate without repairs (p. 43). A foreclosure upon part of the company's property was under way and there was no money to pay the mortgage (p. 44). The business of the company had been suspended (p. 42). The company was not able to meet its current obligations (p. 54). The property was not covered with insurance except to the extent of \$10,000. The prem-

iums on the liability insurance and payroll insurance had not been paid and the insurance was about to be cancelled (p. 107). It would cost at least \$10,000 to put the plant in first-class condition (p. 109). The company was not meeting its obligations as they fell due and it was not financially able to meet the obligations as most of the accounts set up on the books were uncollectible (p. 110). Crossman says (p. 119) that if receivers were placed in charge of the property, "I being the principal creditor, will be forced to take action, much against my will, the direct result of which will be to deprive the other stockholders of the company of their equity therein." And again he says (p. 129): "As I and my wife are the principal creditors, the only effect of forcing this company into receivership and liquidation will be to wipe out the stockholders other than myself, on account of the fact that I am secured by a mortgage on the property for my advances."

Rodemann, an affiant produced by Crossman, who is the treasurer of the company (p. 146) says: "The company has not been, up until the present time, in a position to manufacture profitably," and he then shows why, as he says.

*The current liabilities amounted to \$56,165.65, of which \$28,309.22 represented notes payable and \$19,086.77 accounts payable, and there was no money on hand to meet these accounts, nor was there any source from which money could be raised.*

The company had been conducted at a great loss. During the year 1920 the loss was approximately \$70,000; for the year 1921 approximately \$90,000; from January 1, 1922, to May 11, 1922, \$14,000. It is true that in the loss for 1921 there is figured a depreciation of approximately \$47,000, but the proofs show that this is a comparatively small amount to allow for depreciation in a business of this kind. It was sought to explain these losses

by showing that the plant, during a part of the time, had not been in operation, but at a meeting of the board of directors held February 21, 1920, Crossman stated that the plant would be ready for operation March 6, 1920, and the records of the company show that the plant was actually in operation during the year 1920, and the production from May 1, 1920, to December 31, 1920, was 20,954 tons of briquettes. It is evident, therefore, that the plant was not in process of construction during the year 1921 (p. 237).

There have been carried among the assets of the company such items as moneys paid out in commissions (p. 238).

Notwithstanding these losses the company, for stock jobbing purposes, declared dividends upon its preferred stock upon two occasions.

Against its liabilities, inclusive of stock of \$1,716,982.69, it had assets of all kinds which, according to Crossman, might be worth \$335,000 (see petition, p. 24), and these were its only assets. And in the assets he included accounts receivable which were of doubtful or of no value, and the value placed by Crossman upon the fixed assets was grossly extravagant. Approximately, the value of the total assets had been paid out by way of commissions and discounts upon the sale of stock.

The operation has been a stock jobbing scheme and the stock has been outrageously manipulated. (See report of sales prices, p. 95.)

From the final decree an appeal was taken, (Assignment of Errors filed January 8, 1923, p. 256.)

In the assignment (1 and 4, p. 256), the statement is made that the court erred in taking jurisdiction but this must refer to the question of venue, which had been waived, for no other point of jurisdiction had been mooted below.

On the argument of this appeal counsel for the corporation took the position that the District Court for New Jersey had no jurisdiction to appoint a receiver of a corporation foreign to New Jersey upon the ground that its business had been conducted at great loss, etc. This was an about face from the position taken by counsel for the corporation upon the hearing upon the original order to show cause, which had resulted in the order of July 13, 1922, at which time counsel expressly conceded the jurisdiction of the court, on final hearing, to appoint a receiver under this provision of the statute.

### **C. Continuation of history of proceedings.**

On August 11, 1923, the Circuit Court of Appeals, in an opinion by Buffington, Circuit Judge, held that the District Court for New Jersey had no power to appoint a receiver under this provision of the statute because the Court of Chancery of New Jersey had no such power and in that opinion (p. 263) it said:

“The case will, therefore, be remanded to the court below with instructions to dismiss the bill upon the ground that the company in question being a foreign solvent corporation the court below had no jurisdiction to appoint receivers.”

The Circuit Court of Appeals did not consider the question as to whether the corporation was, in fact, insolvent, which was charged in the bill, nor did it consider the power of the District Court, under its general equity jurisdiction, which was relied upon in the bill. It seemed to consider that it was bound by the adjudication of the District Court that the corporation was not insolvent, notwithstanding the fact that, under the general rule in equity appeals decrees should be affirmed if *for any reason* they be correct.

*McAndrews & Forbes Co. v. Camden*, 78 N. J. E. 244, at p. 247.

The adjudication of the District Court that the corporation was not insolvent was not binding upon the Circuit Court of Appeals.

*Westerman v. Dispatch Printing Co.*, 233 Fed. 609;

*American Rotary Valve Co. v. Moorehead*, 226 Fed. 202;

*Presidio Mining Co. v. Overton*, 270 Fed. 388.

Upon the coming down of the mandate the District Court requested advice from the Circuit Court of Appeals as to the form of the decree. The matter was heard before the Circuit Court of Appeals on December 3, 1923, (p. 268). On January 17, 1924, the Circuit Court of Appeals held that it was without authority to advise the District Court (p. 270). On January 21, 1924, the District Court filed an opinion (p. 276). On January 24, 1924, on that opinion (p. 279) an order was made directing the receivers to account, reserving all further equity until the coming in of the account and exceptions thereto.

From this order, which, in effect, denied the application of the corporation for an immediate decree of dismissal, no appeal was taken nor was mandamus applied for.

On February 7, 1924, the receivers filed their account (p. 280). On February 14, 1924, exceptions were filed thereto (p. 300). On February 21, 1924, the account was referred, *on motion of the solicitor of the corporation*, to a special master to examine. Considerable testimony was taken and on July 16, 1924, he reported (p. 423) approving the account. To this report exceptions were filed (p. 551). On December 19, 1924, a decree was made (p. 565) affirming the account, fixing the receivers' fees and fees for counsel, impressing the indebtedness of the receivers upon the property of the corporation in their control and directing the corporation to pay this indebtedness, and provid-

ing that upon such payment being made the bill be dismissed, and that, if the indebtedness be not paid, application might be made to sell the property to raise and pay the receivers' indebtedness.

From that order an appeal was taken to the Circuit Court of Appeals.

On June 27, 1925, the Circuit Court of Appeals delivered an opinion, the effect of which was to affirm the order of December 19, 1924 (p. 580).

It is to that decision that certiorari was allowed by this Court.

In his Point V of the brief in this Court counsel (p. 31) for petitioner questions the allowances, etc.

After the accounting the accuracy of the account was conceded, and the amount of allowances was expressly conceded to be reasonable. It is so stated in the decree (p. 565). By an order made January 5, 1924, amending the decree (p. 567) there was added a clause which had the effect of reserving to the corporation its contention that no charges whatever, growing out of the receivership, should be made a lien upon its property. Assuming power, the propriety of the charges and of the allowances to receivers and counsel was expressly conceded both in the District Court and in the Circuit Court of Appeals upon argument and it was also conceded that all of the charges stand upon a similar footing.

The sole question raised was whether the court had the power, under the circumstances of this case, to charge against the property of the corporation under the control of the receivers *any* (except taxes, insurance and interest on bonds) expenses of the receivership, and that is the only question which is here upon petitioner's application.

During all of the time that this litigation has been proceeding the receivers have been in charge, operating the business a part of the time, incurring indebtedness and

making disbursements under the terms of the order of July 13, 1922, (p. 252) which continued the receivership established by the order of May 11, 1922, from neither of which orders was an appeal taken, although permitted by statute, nor was any motion made to lift the receivership from an order denying which an appeal might have been taken.

## ARGUMENT.

### I.

#### **THE PROPERTY OF THE DEFENDANT CORPORATION WAS NOT SEIZED BY A COURT HAVING NO JURISDICTION TO APPOINT RECEIVERS.**

This is in answer to Point I of petitioner's brief (p. 11).

The receivers have always been in possession of the property under the order of May 11, 1922, continued by that of July 13, 1922. The order of December 22, 1922, (p. 254) which was the only order appealed from, never became effective because an appeal was taken on January 8, 1923, and, on August 11, 1923, it was reversed.

The result is that during all the course of this litigation the receivers have been in possession under orders which gave them power to operate the business and incur indebtedness, which were not appealed from.

**A. Assuming the decree of the Circuit Court of Appeals reversing the decree of the District Court appointing Receivers, to be correct, the question was not one of jurisdiction.**

While the opinion of the Circuit Court of Appeals, resulting in the reversal of the District Court (p. 263), states "the company in question being a solvent foreign

corporation, the court below had no jurisdiction to appoint receivers," the effect of that opinion is not that the court had no power, *upon the filing of the bill* and the hearing on the order to show cause, to appoint temporary receivers with the powers conferred upon them by the orders of May 11, 1922 and July 13, 1922.

It is conceded that the District Court has power to appoint a receiver of a foreign corporation upon the ground of insolvency. *The bill charged that the defendant was insolvent.*

Even under the decision of the Circuit Court of Appeals the court had clear authority to entertain the bill. True, section 51 of the Judicial Code might have been invoked by the defendant but this was a personal privilege which might be waived and was not only waived by the failure to appear specially but expressly waived by counsel on the argument on the return of the order to show cause. That point of jurisdiction, therefore, is out of the case.

The proofs before the court (much coming from the books, the examination of which the corporation sought to stop), upon the return of the order to show cause, showed a condition of insolvency.

On the date of the original appointment of the receivers the cash balance of the corporation was \$138.75 (p. 75); there was not sufficient money to meet the pay roll which the company had incurred prior to the appointment (p. 110); creditors had been demanding payment (p. 110); it was not possible to operate without repairs (pp. 109-51); a foreclosure upon part of the company's property was under way and there was no money to pay the mortgage (p. 83); the business had been suspended (p. 109); the company was not able to meet its current obligations (p. 110); the property was not covered with insurance except to the extent of \$10,000; the premiums upon the liability



and pay roll insurance had not been paid and the insurance was about to be cancelled; it would cost at least \$10,000 to put the plant in first-class condition; the company was not meeting its obligations as they fell due, and it was not financially able to meet them as most of the accounts standing upon the books were uncollectible (pp. 109-56).

Crossman, the president, says (p. 119) that if receivers were placed in charge of the property "I being the principal creditor, will be forced to take action, much against my will, the direct result of which will be to deprive the other stockholders of the company of their equity therein," and again, he says:

"As I and my wife are the principal creditors, the only effect of forcing this company into receivership and liquidation will be to wipe out the stockholders other than myself, on account of the fact that I am secured by a mortgage on the property for my advances."

Rodeman, an affiant produced by Crossman, who was the treasurer of the company (p. 146) says, "The company has not been, up until the present time, in a position to manufacture profitably."

The current liabilities amounted to \$56,165.65, of which \$28,309.22 represented notes payable and \$19,086.77 accounts payable, and there was no money to meet these accounts, nor was there any source from which money could be raised.

Immediately after the order of July 13, 1922, instead of appealing, *Crossman had the directors pass a resolution consenting to an adjudication in bankruptcy and upon that resolution bankruptcy proceedings were initiated in Delaware.*

The company had been conducted at a great loss; during the year 1920 the loss was approximately \$70,000; for the year 1921 approximately \$90,000; from January 1,

1922, to May 11, 1922, \$14,000 (p. 110); the operation of the corporation had been a stock jobbing scheme and the stock had been outrageously manipulated. (See report of sales prices pp. 96-104.)

This describes a condition of insolvency under the New Jersey statute.

*Wright v. American Finance and Securities Co.*, 85 N. J. E. 181, 193, Court of Errors and Appeals;

*Fort Wayne Electric Corporation v. Franklin Electric Light Co.*, 57 N. J. E. 7;

*Reinhardt v. Inter-State Telephone Co.*, 71 N. J. E. 70;

*Catlin v. Vichachi Mining Co.*, 73 N. J. E. 286;

*Trust Co. v. Trustees of Wm. F. Fisher & Co.*, 67 N. J. E. 602.

The District Court did not, by the order of July 13th, adjudicate that the corporation was not insolvent. Counsel for the corporation had taken the position that, notwithstanding the provision for summary hearing under the New Jersey statute, the Federal Court could not appoint *permanent* receivers until final hearing, and the court yielded to that insistence, and by the order of July 13, 1922, continued the receivers pending the final determination of the cause and the further order of the court.

It is true that when the final hearing came on the court, by its order of December 22 (p. 254), adjudged that "the said corporation is not insolvent."

But when the court so adjudged it must have had in mind the meaning of the term "insolvent" as used by the bankruptcy act. It could not have had in mind the meaning of "insolvent" under the Corporation Act of New Jersey because it clearly appeared, from the proofs, that the corporation *was* insolvent in that sense.

If insolvent in the sense of the New Jersey Corporation Act, then the court had undoubted power to appoint receivers although the corporation was foreign to the State. This is conceded by the Circuit Court of Appeals, and the following cases are applicable:

*Albert v. Clarendon Land and Investment Agency Co.*, 53 N. J. E. 623;

*National Trust Co. v. Miller*, 33 N. J. E. 155, 159;

*Irwin v. Granite State Provident Association*, 56 N. J. E. 244;

*Atwater v. Baskerville*, 89 N. J. E. 121 (V.-C. Lane) affirmed 90 N. J. E. 275.

Irrespective as to whether the court on December 22, 1922, found insolvency it had full jurisdiction to appoint temporary receivers to conserve the property pending the hearing, the bill expressly alleging insolvency.

"It is the initial pleading rather than the facts as they afterwards develop which determine the authority of the court to hear the cause."

15 *Corpus Juris*, title "Courts," section 169:

"The court has judicial power to hear and determine the question of its own jurisdiction; it is not bound to dismiss the suit on a mere allegation but may inquire into the correctness of a averment. So it may receive testimony on a preliminary question to determine its jurisdiction."

15 *Corpus Juris*, title "Courts," section 170, page 851.

This court in *Moore v. New York Cotton Exchange*, decided April 12, 1926, 270 U. S. Supreme Court Reports, p. 593, 70 L. Ed., p. 750 at p. 756, said:

"We do not understand that the dismissal was for the reason that there was any absence of jurisdiction to entertain the bill. What the court held was that the facts alleged were insufficient to establish a case under the Anti-Trust Act. Whether the

objection that a bill of complaint does not state a case within the terms of a Federal statute challenges the jurisdiction or goes only to the merits, is not always easy to determine. The question has been recently reviewed at some length by this court in *Binderup v. Pathe Exchange*, 263 U. S. 291, 305, 68 L. Ed. 308, 314, 44 Sup. Ct. Rep. 96, and the distinction pointed out as follows:

‘Jurisdiction is the power to decide a justifiable controversy, and includes questions of law as well as of fact. A complaint setting forth a substantial claim under a Federal statute presents a case within the jurisdiction of the court as a Federal court; and this jurisdiction cannot be made to stand or fall upon the way the court may chance to decide an issue as to the legal sufficiency of the facts alleged any more than upon the way it may decide as to the legal sufficiency of the facts proven. Its decision either way upon either question is predicated upon the existence of jurisdiction, not upon the absence of it.’ Jurisdiction, as distinguished from merits, is wanting only where the claim set forth in the complaint is so unsubstantial as to be frivolous or, in other words, is plainly without color of merit. (Citing cases.) In that event the claim of Federal right under the statute is a mere pretense and, in effect, is no claim at all.”

Assuming therefore that the decision of the Circuit Court of Appeals in reversing the final decree of the District Court appointing receivers was right, the reversal was not upon the ground of lack of jurisdiction but because the facts did not warrant the relief prayed for in the bill.

Having jurisdiction to determine the facts the court may, in the meantime, protect the property by the appointment of receivers.

“Courts of chancery as well as other courts in the various states which exercise a general jurisdiction

in equity and the judges thereof \* \* \* have inherent jurisdiction to appoint receivers." 34 Cyc. 101.

The purpose is to protect the *res pendente lite* and there is no determination on the merits.

*High on Receivers*, sections 4 and 7.

This case is strictly analogous to *Greenbaum v. Lafayette & Broad Realty Corporation, et al.*, 97 N. J. Eq. 536. In that case a bill was filed in the Court of Chancery of New Jersey for the appointment of a receiver of a corporation alleging insolvency. The order appointing the receiver was reversed by the Court of Errors and Appeals upon the ground that, at the time of the application, the corporation *was in a solvent condition*, and free from any criticism of financial instability, which, under the Corporation Act, could subject it to legal or equitable animadversion.

Upon the remittitur coming down the court directed the receiver to file his accounts. The court allowed the receiver compensation and directed the expenses of the receivership to be paid out of the estate. From that order an appeal was taken.

The Court of Errors and Appeals affirmed the order and stated:

"In the present case the court of chancery was undoubtedly possessed of jurisdiction to make the appointment, even though the jurisdiction was improvidently exercised."

At the same time *Seidler v. Branford Restaurant, Inc.* (97 N. J. Equity 531), was decided.

Counsel attempts to distinguish the *Greenbaum* case on page 24 of his brief. But his distinction is not based upon the facts of the case but upon the use by the Circuit Court of Appeals in this case, in its opinion reversing the order of December 22, 1922, of the term "no jurisdiction."

The court in the Greenbaum case was as much, or as little, without jurisdiction to appoint a receiver as was the court in the instant case to make the order of July 13, 1922. In each case the bill alleged insolvency. In the Greenbaum case the Court of Errors and Appeals held that the insolvency did not exist. Yet that the court had jurisdiction to appoint the receiver and the expense of the receivership were held to be a proper charge against the estate.

In this case, by the order of December 22, 1922, it was adjudged that the corporation was not insolvent but this had no effect upon the power of the court to appoint receivers by the order of July 13, 1922.

When the Circuit Court of Appeals in its opinion (p. 263) held that the District Court was "without jurisdiction" it must have meant, not that the District Court had no jurisdiction to entertain the bill but that, upon it appearing to the court upon the 22nd day of December, 1922, that the corporation was not insolvent, it should have dismissed the bill because the proofs of complainant did not sustain the allegations of the bill, and that the District Court erred in appointing receivers under the terms of the New Jersey statute which permit the appointment of a receiver, notwithstanding solvency, if the corporation is in such condition as that its business is being conducted at great loss, etc. If this be what the Circuit Court of Appeals meant by its decision of August 11, 1923, the power of the court, upon the filing of the bill, to appoint and continue receivers, until the entire controversy was determined both in the District Court and in the Circuit Court of Appeals, is not at all affected.

Moreover, the bill appealed to the inherent jurisdiction of a court of equity. That, under the circumstances present in the instant case, the Court of Chancery of New Jersey has power to appoint a receiver of a domestic cor-

poration without the aid of statute is shown by the case of *Morse v. Metropolitan Steamship Co.*, 87 N. J. E. 217, affirmed 88 N. J. E. 325; *In re N. J. Refrigerating Co.*, 95 N. J. Eq. 215 at 221. That, under similar circumstances, the court has the power to appoint receivers of a foreign corporation is indicated by

*Babcock v. Farwell*, 245 Ill. 14, 19 Ann. Cases 74;

*Starr v. Bankers' Union of the World*, 81 Neb. 377, 116 N. W. 61, 129 American State Reports 684;

*Culver Lumber and Manufacturing Company v. Culver*, 81 Ark. 102, 118 American State Reports 17.

These cases all hold that the question as to whether a court of one state will administer the affairs of a foreign corporation is not one of jurisdiction but of power to enforce jurisdiction, and, where the property is, as in this case, wholly within the territory within which the court operates, there is no reason why the court should not act.

The Circuit Court of Appeals, in its opinion (p. 263), did not consider the inherent jurisdiction of the court nor did it consider the question of fact as to whether the corporation was insolvent within the meaning of the New Jersey statute.

It has sustained in the prior case of *Scattergood v. American Pipe and Construction Company*, 249 Fed. 23, the jurisdiction of a Federal Court in Pennsylvania to appoint receivers of a foreign corporation where the grant of power to the Common Pleas of Pennsylvania was one of general equity jurisdiction.

It confined itself to the statute of New Jersey and held that, although, by the act of 1912, the law of 1896 was amended so as to provide for the appointment by the Court of Chancery of receivers not only of corporations which had become insolvent but of those which had been

conducted at great loss and greatly prejudicial to the interests of creditors and stockholders, etc., and, although section 96 of that act provides that foreign corporations doing business in the State shall be subject to the provisions of the act so far as they *can* be applied to foreign corporations, the Court of Chancery of New Jersey had no power to appoint receivers of foreign corporations upon the last-named ground, and it rested for its determination upon decisions of the courts of New Jersey,

*National Trust Company v. Miller*, 33 N. J. E. 155;

*Minchin v. Second National Bank*, 36 N. J. E. 436,

decided prior to the amendment.

It held that the case of *Atwater v. Baskerville*, 89 N. J. E. 121 (V.-C. Lane), affirmed 90 N. J. E. 274, did not apply, although the Court of Chancery in that case had said:

“The law seems to be well settled that the court of equity has jurisdiction under its inherent power, and that where statutes exist similar to that in this state, then under such statutes, to appoint a receiver of a foreign corporation *upon the ground of insolvency, or upon any other ground which would warrant the appointment of a receiver, to conserve and gather in the assets, either legal or equitable, within the state and to enforce the rights of the corporation, either legal or equitable, which may be enforced against those over whom jurisdiction can be obtained, within the case of Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565.” (Italics mine.)

The Court of Errors and Appeals, 90 N. J. E. 275, affirmed this decision without criticising the language used.

Under the statute of New Jersey foreign corporations are subject to the jurisdiction of its courts *to the extent that jurisdiction can be enforced*. Certainly, where all of



the property of a corporation is within the jurisdiction of a court there is no question of power involved, and the question being, under the cases heretofore referred to, not of jurisdiction but of power to enforce jurisdiction, it is submitted that the Court of Chancery of New Jersey unquestionably has power to appoint receivers of a foreign corporation upon the ground that its business is being conducted at great loss and greatly prejudicial to the interests of its creditors and stockholders, if the decree can be made effective, and in this case it could have been.

**B. The corporation was insolvent and the District Court had complete jurisdiction to appoint receivers.**

The New Jersey statute, as amended in 1912, provides, Sec. 65, C. S. of N. J., 1st Supp., p. 25:

“Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the Court of Chancery for a writ of injunction and the appointment of a receiver or receivers or trustees, \* \* \*.”

Section 96 (2 C. S. of N. J., p. 1657) provides:

“Foreign corporations doing business in this state shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations.”

It was the established law of New Jersey that, under this statute, as it existed prior to the amendment of 1912, receivers might be appointed by the Court of Chancery of insolvent foreign corporations.

The amendment imported into the statute by the act of 1912 were the words “or if its business has been or is

being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders."

*Albert v. Clarendon Land Investment and Agency Company*, 53 N. J. E., p. 623, in which Vice-Chancellor Van Fleet said:

"It (referring to the present section 96 of the Corporation Act) was enacted to give this Court the same jurisdiction over foreign corporations doing business in this state, when they become insolvent and have property here, that it exercises over insolvent domestic corporations, so far, at least, as should be necessary for the sequestration of their property here, and converting the same into money."

In *National Trust Company v. Miller*, 33 N. J. E. 155, at p. 159, Vice-Chancellor Van Fleet had said:

"The legislative design was, unquestionably, to confer upon this Court the same powers, in respect to insolvent corporations, created by foreign jurisdictions, having property in this state, that it exercised over insolvent domestic corporations, so far, at least, as the exercise of such powers was necessary to the recovery of any assets whether legal or equitable, which should go in discharge of debts."

And in *Irwin v. Granite State Provident Association*, 56 N. J. E. 244, Vice-Chancellor Reed said that the receiver in the State of New Jersey would not amenable to the direction of the domiciliary receiver if one had been appointed.

It was at one time thought by the bar that the language of the Court of Errors and Appeals in *McDermott v. Woodhouse*, 87 N. J. E. 615, was broad enough to indicate that there was doubt as to the power of the Court over foreign corporations, but the Court of Errors and Appeals in *Atwater v. Baskerville*, 90 N. J. E. 275, set this at rest and said:

“It (McDermott v. Woodhouse) expressly recognized the power of our courts to gather in, and control the disposition of the assets of a foreign corporation found within this state. *Irwin v. Granite State Provident Association*, 56 N. J. E. 244.”

**C. The District Court had jurisdiction to appoint Receivers of a foreign corporation under the New Jersey statute, upon the ground that its business was being conducted at great loss, etc.**

But the power of the New Jersey courts to appoint receivers of foreign corporations is not limited to corporations which may be insolvent.

Under the express words of section 65, as amended by the laws of 1912, the courts of New Jersey may appoint receivers of corporations if their business is being conducted at great loss and greatly prejudicial to the interests of its creditors or stockholders.

There is no distinction between the power of the court to appoint receivers of domestic corporations where they are insolvent, or where their business is being conducted at a great loss. The words in the statute are connected with the disjunctive “or.”

Section 96 expressly subjects foreign corporations doing business in the State of New Jersey to the provisions of this act, so far as the same *can* be applied to foreign corporations.

The question, therefore, is not of jurisdiction but of ability to make the decree effective. Rather the question is one of discretion in the exercise of jurisdiction.

It is true that Vice-Chancellor Van Fleet in *National Trust Company v. Miller*, 33 N. J. E. 155, and in *Albert v. Clarendon Land Investment and Agency Company*, 53 N. J. E. 623, spoke of the jurisdiction over *insolvent* foreign corporations, but this was because the statute had given the courts of New Jersey power to appoint receivers of domestic corporations *only* when they were

insolvent, the Vice-Chancellor in each case indicating that it was the intent of section 96 to give the Court of Chancery of New Jersey the *same* powers over foreign corporations as it had over domestic corporations to the extent that the powers *could* be exercised.

That the matter is one of power to enforce jurisdiction is indicated by Chancellor Runyon in *Minchin v. Second National Bank*, 36 N. J. E. 436, in which he said:

“Obviously, there are provisions of the act which *cannot* be applied to such corporations (foreign corporations); for example, this court cannot hinder such corporations from exercising their franchises, except as it may enjoin them from exercising them in this state. It can sequester their property here and administer it for the benefit of creditors and stockholders, but it can do but little more.”

And the Chancellor further said:

“The foreign corporation doing business here is subject to the provisions of our statute, so far as its property in this state is concerned.”

*Atwater v. Baskerville*, 89 N. J. Eq. 121, affirmed 90 N. J. E. 275, indicates, as do the preceding cases, that there is no distinction between foreign corporations and domestic corporations with respect to the grounds upon which a receiver may be appointed. Receivers of foreign corporations may be appointed upon the same ground as receivers of domestic corporations. *The distinction is as to the powers of the receiver after appointment.* The powers differ because the power of a court over a domestic corporation is broader than its power over a foreign corporation. Domestic corporations may be put to death by a decree of dissolution. Foreign corporations may not. That the distinction is between the extent of the authority of the receivers after appointment and not between foreign and domestic corporations with respect to

the grounds upon which the appointment may be made is indicated by the line of cases heretofore referred to.

In *Minchin v. Second National Bank*, 36 N. J. E. 436, the court said:

"Obviously there are provisions of the act which *cannot* be applied to such corporations; for example, this court cannot hinder such corporations from exercising their franchises, except as it may enjoin them from exercising them in this state. It can sequester their property here and administer it for the benefit of creditors and stockholders, but it can do but little more."

And Vice-Chancellor Van Fleet said in *Albert v. Clarendon Land Investment and Agency Company*, 53 N. J. E., p. 623, and in *National Trust Company v. Miller*, 33 N. J. E. 155, at p. 159:

"The legislative design was, unquestionably, to confer upon this court *the same powers*, in respect to insolvent corporations, created by foreign jurisdictions, having property in this state, that it exercised over insolvent domestic corporations, so far, at least, as *the exercise of such powers as necessary to the recovery of any assets, whether legal or equitable, which should go in discharge of debts.*"

And the Court of Errors and Appeals said in *Atwater v. Baskerville*, 90 N. J. E. 275:

"It (referring to *McDermott v. Woodhouse*), expressly recognized the power of our courts to gather in, and control the disposition of, the assets of a foreign corporation found within this state."

The Court of Chancery and the Court of Errors and Appeals in these cases have expressly recognized that, even with respect to insolvent foreign corporations, the Court of Chancery cannot exercise the same measure of control as it can with respect to insolvent domestic

corporations. The measure of control exercised by the courts is not placed by the courts upon the ground of lack of jurisdiction but upon the ground of lack of power to enforce the jurisdiction.

It is not suggested that the Court of Chancery has not the same power to appoint a receiver of a foreign corporation whose business is being conducted at great loss and greatly prejudicial to the interest of its creditors or stockholders as it has to appoint a receiver of a domestic corporation upon the same grounds. When the receiver is appointed of a foreign corporation upon this ground his powers are circumscribed precisely in the same way as the powers of a receiver appointed of a foreign corporation upon the ground of insolvency would be circumscribed but to no greater extent. The court has jurisdiction, and power to enforce that jurisdiction, to gather in the assets of a foreign corporation within the state and to conserve them and to administer them and to distribute them "for the benefit of creditors and stockholders," to use the language of the Vice-Chancellor in *Minchin v. Second National Bank*, 36 N. J. E. 436.

The law generally is settled that the question is one of discretion in the exercise of jurisdiction and not one of jurisdiction.

In *Babcock v. Farwell*, 245 Ill. 14, 19 Anno. Cases 74, there was a stockholders' suit brought by a stockholder against a corporation, organized under the laws of Great Britain, and other persons, alleging mismanagement on the part of the officers and asking for an accounting. A demurrer was filed to the bill. The demurrer stated as grounds that the Court had no jurisdiction because it had to do with the internal affairs of the corporation and also because the charges set forth in the bill were not sufficient to maintain a cause of action assuming jurisdiction. The demurrer was sustained. The case got to the Illinois

Supreme Court. In that court the same grounds were set up. The Court declined to decide the case upon the jurisdictional ground. It decided it upon the merits. With respect to the jurisdictional ground it said, referring to the rule that the courts of one state will not interfere with the internal affairs of corporations of another state:

“Except in cases involving the exercise of visitorial powers, the question is *not strictly one of jurisdiction, but rather of discretion in the exercise of jurisdiction*. The reasons which influence courts of chancery to refuse to interfere in the management of the internal affairs of a foreign corporation are, that the rights arising between a corporation and its members out of such management depend upon the laws of the state under which the corporation is organized; that the courts of that state afford the most appropriate forum for adjudication upon the relation between the stockholders and the corporation, and that frequently such courts alone possess power adequate to the enforcement of all decrees that justice may require. *It is the inability of the court to do complete justice by its decree, and not its incompetency to decide the question involved, that determines the exercise of its power*. The general statement that the courts will not interfere with the management of the internal affairs of foreign corporations must be construed in connection with the particular facts. *The rule rests more on grounds of policy and expediency than on jurisdictional grounds; more on want of power to enforce a decree than on jurisdiction to make it.*”

This language of the Illinois Court was cited with approval in *Chicago Title and Trust Company v. Newman*, Circuit Court of Appeals for the Seventh Circuit, 187 Fed. 573. One of the questions in that case had been the power of a state court to appoint a receiver at the suit of a stockholder upon the ground that the foreign corporation contemplated action which would result in injury to the stock-

holder. The Circuit Court of Appeals, speaking by Judge Sanborne, said:

*"Strictly speaking, there never was any question of jurisdiction in the case. It was one of equity power. A court of equity will not, as a general rule, administer the internal affairs of a foreign corporation. As decided by the Supreme Court of Illinois in Babcock v. Farwell, 245 Ill. 14, 33; 91 N. E. 683, the question is not strictly one of jurisdiction, but rather of discretion in the exercise of jurisdiction. And the Supreme Court of the United States has often had occasion to make the same distinction. Blythe v. Hinckley, 173 U. S. 501, 43 L. Ed. 783; Bache v. Hunt, 193 U. S. 523, 48 L. Ed. 774; Louisville Trust Co. v. Knott, 191 U. S. 225, 48 L. Ed. 159; see also re Hill Co., 159 Fed. 73."*

In *Starr v. Bankers' Union of the World*, 81 Neb. 377, 116 N. W. 61, 129 American State Reports 684, there was an application to appoint a receiver because of *ultra vires* acts committed by the defendant. The court said:

*"That a court should not appoint a receiver to administer the internal affairs of a foreign corporation is a very general rule, the reason for which is that the court cannot obtain control of all the property, books, records and members of the corporation so as to do full justice between all the parties interested, but the operation of this rule ceases when the reason for it no longer exists, and whatever might be the objection to appointing a receiver for the property for a foreign corporation found in this state where such property is only part of its assets, and where the books and records and officers of such corporation are beyond the process of the court, they do not apply in this case. \* \* \**

None of the ordinary reasons why the courts of this state should not take jurisdiction of these assets remained, but whether the suit in which the receiver was appointed is considered as one to subject the assets of the foreign corporation found in this state to the payment of its debts, or whether it be considered as a suit to administer and wind



up the affairs of such corporation, every reason exists why the courts of this state should take jurisdiction."

In *Culver Lumber and Manufacturing Company v. Culver*, 81 Ark. 102, 118 American State Reports 17, a bill was filed by a stockholder setting up that the business of the company, which was a foreign corporation, had been extravagantly and recklessly conducted, and that it was in a condition where if the business continued there might be attachments begun by creditors, and as the Court said—

"At the time of the institution of this suit the property of the corporation was in a precarious condition. It was threatened with attachment by creditors, which begun, it being a foreign corporation and considerably in debt, the probability is all the creditors, for their own protection, would have been forced to attach. In that event the probable result would have been the sacrifice of its property and hopeless insolvency. Its officers were recklessly and extravagantly managing its business affairs, involving it in debt, and converting its property to their own use. Its board of directors, although requested to do so, refused to interfere. The interposition of a court of equity and the appointment of a receiver were necessary, and demanded for the protection of stockholders and creditors."

"Courts of equity have no right or authority to dissolve a foreign corporation, or wind up its business, *but they may, in cases like this, take charge of its property within the jurisdiction of the court, and enforce the rights of creditors and stockholders in respect to the same, where it can be done by the exercise of equity jurisdiction.*"

In *Scattergood v. American Pipe and Construction Company*, 249 Fed. 23, Circuit Court of Appeals for the Third Circuit, sustained the appointment of receivers of the American Pipe and Construction Company, a corporation of New Jersey and having property in Pennsylvania

as well as in New Jersey. The United States District Court, for the District of Pennsylvania, appointed a general receiver of the corporation, although there was no allegation of insolvency. The question was raised in the Circuit Court of Appeals as to the jurisdiction of the District Court over the corporation because it was a New Jersey corporation. That court sustained the jurisdiction. The court cited Pennsylvania cases and said:

"Among the Pennsylvania cases may be mentioned *Bank v. Construction Co.*, 242 Pa. 269, 89 Atl. 76, where the state courts exercised jurisdiction over a New Jersey corporation 'with a principal office in Philadelphia, engaged largely in building railroads and in public contracts,' settled its affairs, and wound up its business; and *Blum Bros. v. Girard Bank*, 248 Pa. 148, 93 Atl. 940, Ann. Cas. 1916D 609, where the Common Pleas Court appointed receivers for a New Jersey corporation doing a mercantile business in Philadelphia, although the bill averred that the corporation was solvent, being in possession of assets far in excess of its liabilities, but was temporarily embarrassed by reason of a stringent money market and other circumstances."

This case is direct authority in the case at bar.

To say that the appointment of a receiver of a going corporation, removing its assets from the control of its board of directors and placing them in the hands of a receiver authorized to carry on the business, is not an interference with the internal affairs of a corporation is impossible.

If the court of a foreign district may go so far as the court went in the Scattergood case then unquestionably the court may proceed to wind up the affairs of a foreign corporation, in so far as the administration and liquidation and distribution of its property within the state is concerned, for the benefit of its creditors and stockholders.

*Albert v. Clarendon Land Investment and Agency Company*, 53 N. J. E. 623;

*National Trust Company v. Miller*, 33 N. J. E. 155;

*Minchin v. Second National Bank*, 36 N. J. E. 436;

*Atwater v. Baskerville*, 89 N. J. E. 121, affirmed 90 N. J. E. 275;

*Culver Lumber and Manufacturing Co. v. Culver*, 81 Ark. 102, 118 American State Reports 17, 99 S. W. 391;

*Starr v. Bankers' Union of the World*, 81 Neb. 377, 116 N. W. 61, 129 American State Reports 884;

*Babcock v. Farwell*, 245 Ill. 14, 19 Anno. Cases 74.

And in *Central Trust Company v. McGeorge*, 151 U. S. 129, 38 L. Ed. 99, this court reversed the Circuit Court in dismissing a bill filed by a non-resident creditor against a foreign corporation praying for the appointment of a receiver and the liquidation of the affairs of the company within the state.

The extent to which the United States District Court will administer the provisions of the state statute is indicated by the opinion of Judge Davis in *Kessler v. Necker*, 258 Fed. 654.

The District Court had full and complete jurisdiction to appoint a receiver of the defendant, the Delaware corporation under the provisions of the New Jersey statute even if the corporation were not insolvent, or potentially insolvent, because its business was being conducted at great loss and greatly prejudicial to the interest of its creditors or stockholders.

**D. Aside from the New Jersey statute the Court had inherent jurisdiction to appoint a Receiver upon the facts proven.**

In *Scattergood v. American Pipe and Construction Co.*, 249 Fed. 23, the only statute relied upon by the Circuit

Court of Appeals was a statute of Pennsylvania which gave to the courts of common pleas the supervision and control over corporations.

This statute merely gave to the Court of Common Pleas the power of the English Court of Chancery over corporations. That power is possessed by the Court of Chancery of New Jersey and is likewise possessed by the federal courts and the federal court jurisdiction in equity cannot be narrowed by either a statute of the state or a judicial decision thereof.

*Mississippi Mills v. Cohn*, 150 U. S. 202, 37 L. Ed. 1052;

*Guffey v. Smith*, 237 U. S. 101 114.

The Circuit Court of Appeals in the Scattergood case, cited with approval the case of *Bank v. Construction Co.*, 242 Pa. 269, 89 Atl. 76, where the state court exercised jurisdiction over a New Jersey corporation "with a principal office in Philadelphia, engaged largely in building railroads and in public contracts" settled its affairs, and wound up its business, and it likewise cited with approval *Blum Bros. v. Girard Bank*, 248 Pa. 148, 93 Atl. 940, Ann. Cas. 1916D 609, where the Common Pleas Court appointed receivers for a New Jersey corporation doing a mercantile business in Philadelphia, although the bill averred that the corporation *was solvent*, being in possession of assets far in excess of its liabilities, but was temporarily embarrassed by reason of a stringent money market, and other circumstances.

In *Babcock v. Farwell*, 245 Ill. 14, 19 Ann. Cas. 74, the court, in holding that the question whether the courts of one state will exercise jurisdiction over the affairs of a corporation of another state, was one of discretion in the exercise of jurisdiction and not a question of jurisdiction, was referring to the common law power of a court of equity.

In *Starr v. Bankers' Union of the World*, 81 Neb. 377, 116 N. W. 61, 129 American State Reports 684, in which the court sustained the power of the courts of a state to administer the affairs of a foreign corporation where the property was within the jurisdiction of the court, the court was relying upon the inherent power of a court of equity and not upon a statute.

And so in *Culver Lumber and Manufacturing Company v. Culver*, 81 Ark. 102, 118 American State Reports 17.

Nor did it appear that there was a statute involved in *Central Trust Company v. McGeorge*, 151 U. S. 129, 38 L. Ed. 99.

That the New Jersey Court of Chancery has the inherent jurisdiction under its general equity power to appoint a receiver of a corporation not insolvent, and actually wind up its business is settled by *Morse v. Metropolitan Steamship Company*, 87 N. J. E. 217, affirmed 88 Eq. 225. In that case the Court of Chancery (Lane, F.-C.), said:

"I do not find that the courts of this state have in anywise limited the general doctrine which prevails in England and throughout this country that whenever because of gross abuse of trust, because of dissension among the members of the board of directors or the stockholders, because there is no properly constituted board, or because the company has failed of its purpose, there is a necessity for judicial intervention, a court of equity may intervene under its general jurisdiction and appoint a receiver and grant such other relief as may be necessary. The text book authorities are to the effect that the power exists, but that, of course, it must be exercised with discretion. \* \* \*

"I am willing to say that if it were necessary to sustain the jurisdiction of this court upon the present bill I would, as presently advised, hold that this court may, if the circumstances indicate that the corporation cannot properly be conducted by

reason of the fact that no competent, proper board of directors can ever be elected, under its general equity power, actually wind up the corporation and divide its assets."

In that case it appeared that the majority of the stock was in the control of those whom it was alleged had perpetrated the fraud on the corporation and hence the language of the court.

That the doctrine of this case may be applied to foreign corporations we submit is settled by the affirmance of the Court of Errors and Appeals in *Atwater v. Baskerville*, 90 N. J. E. 275, in which case in the court below, the Court said (89 N. J. E. 121, at p. 127):

"The law seems to be well settled that the court of equity has jurisdiction under its inherent power, and that where statutes exist similar to that in this state, then under such statutes, to appoint a receiver of a foreign corporation *upon the ground of insolvency, or upon any other ground which would warrant the appointment of a receiver.* \* \* \*"

The question as to whether the court will, under its inherent power, interfere with the affairs of a foreign corporation is the same as the question as to whether it will interfere where the power is conferred by statute, to wit, the question of discretion in the exercise of jurisdiction.

## II.

**THERE WAS SUCH ACQUIESCENCE IN THE JURISDICTION OF THE COURT AS THAT THE EXPENSES OF THE RECEIVERSHIP MAY PROPERLY BE CHARGED AGAINST THE CORPORATION.**

The District Court (p. 276) and the Circuit Court of Appeals (p. 580) so held.

As stated by both courts, the question of jurisdiction which led to the reversal by the Circuit Court of Appeals of the order of December 22, 1922, was not raised or suggested until a few days prior to the decree of December 22, 1922, and then, in a contempt proceeding, so says the opinion of the Circuit Court of Appeals, *it was intimated*. It was not mooted on the hearing on the decree of December 22, 1922, and was, in fact, first raised upon the argument of the appeal from that order which took place during the March Term, 1923, of the Circuit Court of Appeals.

Counsel on page 14 still goes back to the matter of jurisdiction under section 51 of the Judicial Code, which was expressly waived.

Counsel says (p. 15) that, prior to the order of July 13, 1922, there was certainly no acquiescence. *There certainly was acquiescence in the jurisdiction of the court upon the point now argued.* The parties litigated upon the meritorious question of first, whether there was insolvency or solvency and second, whether the business was being conducted at great loss and greatly prejudicial to the interest of creditors and stockholders. Counsel for the corporation on the argument which led to the order of July 13, 1922, expressly stated in his brief that upon the second ground the court would have jurisdiction upon final hearing to appoint receivers.

Counsel expressly waived any point of jurisdiction based upon section 51 of the Judicial Code.

There never was any objection to the jurisdiction of the District Court as a federal court insisted upon and, as this court in *Pusey and Jones Company v. Hans Karluf Hansen*, 261 U. S. 491, 67 L. Ed. 763, such lack of equity jurisdiction (if not objected to by defendant) may be ignored by the court in cases where the subject matter of the suit is of a class of which a court of equity has jurisdiction. And where the defendant has expressly consented to action by the court, or has failed to object seasonably, the objection will be treated as waived.

In this case, there was no objection made upon the ground of lack of equity.

Instead of appealing from the order of July 13, 1922, Crossman secured a resolution of the Board of Directors *admitting bankruptcy* and attempted to have the corporation adjudicated a bankrupt in Delaware, *although contending at the same time in New Jersey that the corporation was solvent*.

When an appeal was finally taken from the order of December 22, 1922, no application for a supersedeas was made. Counsel says, in explaining why the order of July 13, 1922, was not appealed, (p. 15)

“but the directors of the petitioner so far disregarded it that they were cited for contempt.”

This is not a proper way to review an appealable order.

Counsel says that upon the final hearing petitioner moved “to discharge the orders of May 11th and July 13th, 1922,” (p. 15 of his brief). There is nothing in the record so indicating and it is not a fact that any such motion was made.

Acquiescing, as it did upon the hearing which resulted in the order of July 13, 1922, in the jurisdiction of the District Court to make a final decree, it must have acquiesced in the jurisdiction of the court to, through its receivers,



operate the property in the meantime, but, as argued above, whether it acquiesced in the jurisdiction or not the court, unquestionably, had jurisdiction upon the bill *as filed* to operate the property through receivers pending final determination.

**There was no time when acquiescence ceased.**

Under his subdivision 4 of Point II counsel, on page 31, refers to the failure to appeal from the order of July 13, 1922, and no inference is to be gathered from anything that he there says that any attack was made upon the order of May 11, 1922, for lack of jurisdiction.

The effect of the failure to appeal from the order of July 13, 1922, when an appeal might have been taken and a supersedeas applied for is stated in the case of *Pagett v. Brooks*, 37 Southern 263 (140 Ala. 257), hereafter referred to.

Counsel seems to conceive that the institution of bankruptcy proceedings in Delaware, claimed to have been instituted in violation of the injunction of the District Court was more effective evidence of non-acquiescence in the order of July 13, 1922, than an appeal would have been (p. 26 of his brief).

Counsel would seem to infer that where its jurisdiction is conceded upon the record the District Court must take notice of statements made in other proceedings attacking its jurisdiction. Was the District Court, because of the suggestions made in the contempt proceedings, to forthwith discharge its receivers?

Under his subdivision 5 of Point II counsel argues that the vigorous opposition to the appointment of receivers upon other grounds was equivalent to questioning the jurisdiction of the court. This is, of course, not so, for the moment the jurisdiction of the court is conceded then the decree, which is sought to be reviewed by cer-

tiorari, is unquestionably right for, when the jurisdiction of the court is conceded, it must be also conceded that the orders of July 13, 1922, and May 11, 1922, providing for the temporary receivers, were correct for the court in that event would have the right to preserve the property *pendente lite*, and the receivership would not be, as indicated by counsel on page 28, to "a void receivership."

### III.

#### POINT III OF PETITIONER'S BRIEF.

In his Point III counsel says acquiescence cannot possibly justify indebtedness incurred after the acquiescence ceased.

The difficulty is that acquiescence in the order of July 13, 1922, never ceased and it is under *that* order that the respondents have been continuously in possession of the property of the defendant corporation. True, the defendant attacked the decree of December 22, 1922, and raised in the Circuit Court of Appeals the question of the jurisdiction of the court but the District Court could not be expected to, *upon that mere suggestion*, revoke its order of July 13, 1922. It therefore was obliged to leave its receivers in charge until the determination by the Circuit Court of Appeals of the validity of the decree of December 22, 1922. Having acquiesced in the jurisdiction of the court so far as the order of July 13, 1922, was concerned the corporation must be held to have acquiesced in all of the results which might flow from an exercise of jurisdiction by the District Court.

## IV.

**THE DECISION OF THE CIRCUIT COURT OF APPEALS IS NOT IN CONFLICT WITH THE DECISIONS OF THIS COURT OR OF ANY OTHER FEDERAL COURT.**

In *Couper v. Shirley*, 75 Fed. 168, cited by counsel for petitioner, the court said:

"It must be borne in mind that the appointment of Couper as a receiver was *not* made by virtue of any of the established general principles of equity, which, *when alleged to exist, would authorize a court of equity to appoint a receiver, but was made solely in pursuance of the stipulation contained in the mortgage.*"

In the case at bar the appointment of the receiver *was* made by virtue of the general principle of equity which permits a court to protect property pending a determination of a cause, and the language in the Couper case clearly indicates that, in the view of the court, if such were the situation, allowances could be made out of the fund.

In *Beech v. Macon, etc. Co.*, 125 Fed. 513, the attack was upon the very order of appointment and the court said:

"It is a principle of general application that, if the appointment of a receiver is erroneous or void, *and the adverse party does not acquiesce in it but continues to contest it to a successful determination, etc.*"

And again the court said:

"The property having been taken from the defendants against their consent under an erroneous order, *which they resisted successfully in an appellate court.*"

To indicate the distinction between that case and the one at bar it is only necessary to again refer to the fact that the order of July 13, 1922, under which the receivers acted, was never directly attacked.

In *Chicago v. Newman*, 187 Fed. 573, p. 18 of petitioner's brief, the proceedings were attacked from the very inception upon the precise ground of jurisdiction determined by the court.

In *Fryer v. Weakley*, 261 Fed. 509, there was a direct attack upon the order of appointment.

The case of *Bricton Mfg. Co. v. Woodrough*, 248 Fed. 484, p. 19 of petitioner's brief, was one in which the court said:

" \* \* \* neither pleadings nor proof brought the controversy within the chancellor's reach."

In the instant case the pleadings *did* bring the controversy within the reach of the court.

In *re Hurlburt Motors, Inc.*, 275 Fed. 62, p. 19 of petitioner's brief, is the opinion of a district court judge concededly opposed to the opinion of the Circuit Court of Appeals for the 7th Circuit in *re T. E. Hill Company*, 159 Fed. 73. In this latter case a petition in bankruptcy was filed and a receiver appointed. Subsequently the bankruptcy proceedings were dismissed upon the ground "that the corporation was not subject to adjudication as a bankrupt."

*T. E. Hill Company*, 159 Fed. 73, will be hereafter mentioned.

In *Hawes v. First National Bank of Madison*, 229 Fed. 51, the attack was upon the jurisdiction of the federal court *as such*, the requisite diversity of citizenship not being present.

*Lion Bonding Company v. Karatz*, 262 U. S. 640, 67 L. Ed. 1151, has no application here for in that case the objection was to the jurisdiction of the District Court as a federal court. See *Lion Bonding Company v. Karatz*, 262 U. S. 75, 67 L. Ed. 871. And this Court in the *Lion*

case distinguished *Palmer v. Texas*, 212 U. S. 118, 53 L. Ed. 435, upon that ground.

Here there was no attack upon the jurisdiction of the federal court *as such*. Counsel, however, persists in arguing that the federal court had no jurisdiction by reason of the non-residence of both parties referring to judicial code 51 which confers but a personal privilege which may be waived and which was waived and which therefore does not go to the jurisdiction.

Whatever attack there is upon the jurisdiction of the District Court is not to it as a federal district court but in reality for want of equity and as this Court in *Pusey & Jones Company v. Hans Karluf Hanssen*, 261 U. S. 491, 67 L. Ed. 763, says, this might be ignored by the court where the subject matter of the suit is of a class of which a court of equity has jurisdiction.

## V.

**THE DECISION OF THE CIRCUIT COURT OF APPEALS IS IN ACCORD WITH THE DECISIONS OF THIS COURT, THE LOWER FEDERAL COURTS AND COURTS OF OTHER JURISDICTIONS.**

### A. Cases in this Court.

The controlling case is *Palmer v. Texas*, 212 U. S. 118, 53 L. Ed. 435, which counsel seeks to distinguish on page 22 of his brief. The state court appointed receivers of a corporation. Thereafter a bill was filed by a stockholder in the United States Circuit Court praying for the appointment of a receiver, the corporation waived the service of subpoena, confessed the averment of the bill and a receiver was appointed. The federal receiver took possession of the property. The State of Texas then applied to the Circuit Court to set aside the order appointing the receiver. This the Circuit Court refused to do, whereupon an appeal was taken to the Circuit Court

of Appeals and that court held that the state court had first acquired jurisdiction and vacated the order of the Circuit Court appointing the receiver and remanded the case to the Circuit Court with directions to discharge the receiver, and to tax all the costs of the receivership against the complainant. This Court held that the state court having first acquired jurisdiction "such property is withdrawn from the courts of the other authority as effectually as if the property had been entirely removed to the territory of another sovereignty." *In other words, the property over which the federal court appointed its receiver was beyond its jurisdiction.* This Court said that the Circuit Court of Appeals was right in reversing the order appointing the receiver but was wrong in allowing costs against complainant and this Court said:

"The receivership has gone on pending the proceedings upon appeal, and we are of the opinion that justice will be done if the costs of the receivership are paid out of the fund realized in the Federal Court."

In distinguishing that case from this counsel says (p. 23 of his brief) that in that case "the receivership was erroneous. In this case, the court had no jurisdiction to seize the property through its receivers."

In the Palmer case this Court said that the property of the corporation at the time of the appointment of a receiver by the Federal Court was "withdrawn from the jurisdiction of the Federal Court as effectually as if it had been entirely removed to the territory of another sovereignty." The property of the defendant corporation being withdrawn from the jurisdiction of the court it is hard to say that the Federal Court had jurisdiction to appoint a receiver over it. Nor is it correct to say that the court in the instant case had no jurisdiction to seize the property through its receivers. The bill filed

made a case appropriate for the appointment of receivers. The court had jurisdiction to appoint receivers by the order of July 13, 1922, *pendente lite*.

*Atlantic Trust Co. v. Chapman*, 208 U. S. 360, 52 L. Ed. 528, is important as indicating the power of a court of equity to appoint receivers and the general principles of equity recognized as applicable to receivers so appointed. This Court declined to hold a complainant personally liable for a receivership deficiency. The court said:

"When a court exercising jurisdiction in equity appoints a receiver of all the property, the court assumes the administration of the estate; the possession of the receiver is the possession of the court; and the court itself holds and administers the estate, through the receiver as its officer, for the benefit of those whom the court shall ultimately adjudge to be entitled to it. \* \* \* A receiver, as soon as he is appointed and qualifies, comes, as we have said, under the sole direction of the court. The contracts he makes or the engagements into which he enters, from time to time, under the order of the court, are, in a substantial sense, the contracts and engagements of the court. *The liabilities which he incurs are liabilities chargeable upon the property under the control and in the possession of the court, and not liabilities of the parties. They have no authority over him and cannot control his acts.*"

## B. Other Federal Cases.

In *T. E. Hill Company*, 159 Fed. 73, a petition in bankruptcy had been filed and a receiver was appointed. Subsequently the bankruptcy proceedings were dismissed upon the ground "that the corporation was not subject to adjudication as a bankrupt." During the proceedings the property was in the hands of a receiver and "the

only contest or objection raised in the course of the proceedings was to the adjudication of bankruptcy." The fees of the receiver and counsel were allowed out of the estate. There was an appeal, and the court said:

"On behalf of this assignee it is contended that he is entitled to the corporate assets 'without any deduction for the expenses of the receivership'—in effect it was not within the power of the court, after dismissal of the petition for adjudication of bankruptcy, to award payment for expenses or compensation of the receiver out of the funds in the custody of the court. The only reviewable question under his petition rests on this broad proposition, and it cannot be upheld, as we believe, when the jurisdiction of the district court over the subject matter is ascertained and recognized. Upon the filing of the petition for an adjudication against the corporation and service of process, jurisdiction over parties and subject matter was established. \* \* \* was complete for the hearing and determination of all the issues involved, whatever the ultimate conclusions of the court upon such issues. \* \* \* the power and duty of the court, in such case, is unquestionable, to appoint a receiver, when found necessary for preserving—the estate in controversy, and take charge of the property \* \* \* after the filing of the petition and until it is dismissed or the trustee qualified. This preservation of *res* and *status quo* is an elementary requirement in bankruptcy when ground appears for the exercise of such power, and until the issues are decided the jurisdiction is exclusive. The receiver, upon his appointment and acceptance, becomes the officer and hand of the court in the performance of his duties, neither subject to the wishes or directions of the parties, nor dependent upon the result of the controversy for payment of expenses or services; and he is clearly entitled to protection by the court, in the exercise of such jurisdiction for all expenses rightly incurred, services rendered under its order either in allowance out of the funds committed to



his charge, or through provision otherwise made by the court to that end. *The rule thus settled in reference to receivers in equity* (High on Receivers, section 797; Smith on Receiverships, section 350) applies with special force for protection of these statutory receivers." (Italics mine.)

The authority of this case is not questioned in *re Aschenbach*, 183 Fed. 305.

Although the bankruptcy act only permits the adjudication of corporations engaged in certain classes of business which, by the petition it was alleged to be engaged in, in *re New England Breeders Club*, 169 Fed. 586, held that the fact that the corporation was not engaged in the business which, by the petition it was alleged to be engaged in, was not a matter which went to the jurisdiction of the court. The court said:

"If it be true as the Supreme Court has thus held by implication that insufficient allegation of the respondent's business does not deprive the District Court of jurisdiction of the petition in involuntary bankruptcy *a fortiori* the District Court is not deprived of jurisdiction by proof that this allegation is untrue."

And it was likewise so held in the District Court of Pennsylvania in *re Wilkes-Barre Light Company*, 235 Fed. 807.

In *re Hill Company* was apparently approved by Judge Haight in *re Weissbord*, 241 Fed. 516, and Judge Haight here said:

"The petition was not dismissed, because the court never had jurisdiction to hear and determine whether the respondent had committed an act of bankruptcy, or to appoint a receiver in the interim, but because, after it was found that an act of bankruptcy had not been committed, *it was without jurisdiction to wind up the respondent's affairs and distribute his assets among his creditors.*" (Italics mine.)

So here. Assuming that the Circuit Court of Appeals is correct in its holding upon the original appeal that the federal district court had no jurisdiction to appoint a receiver under that provision of the New Jersey statute, permitting the appointment of receivers because a business of a corporation is being conducted at a great loss and greatly prejudicial, etc., it was not determined that the District Court had no jurisdiction to appoint receivers upon the filing of the bill nor that it had no jurisdiction to appoint receivers by the order of July 13, 1922, because the allegations in the bill made out a case of insolvency and upon the bill as filed and the proofs made the court had the unquestioned right to appoint receivers *pendente lite*. The failure of proof, if failure there was, does not affect the original power of the court.

### C. Cases in New Jersey.

*Greenbaum v. Lafayette & Broad Realty Corporation*, 97 N. J. Eq. 536. In that case although the Court of Appeals reversed the order appointing receivers upon the ground that the proofs did not show that the corporation was insolvent, nevertheless it held that the expense of the receivership should be first made out of the property in the control of the receivers.

In *Stokes v. Knickerbocker Investment Company*, 70 N. J. Eq. 518, a receiver had been appointed on an *ex parte* application. Upon the hearing it appeared that the receiver should be discharged and the court declined to continue him. Notwithstanding this, Vice-Chancellor Bergen afterwards Supreme Court Justice, held that the reasonable expenses of the receiver should be paid by the defendant company.

### D. Cases From Other Jurisdictions.

A case almost exactly in point is *Pagett v. Brooks*, 37 Southern 263, 140 Ala. 257. The Chancellor had appointed a receiver to protect property *pendente lite*. The case was decided in favor of the defendants and the bill dismissed. A suit was brought on a bond given by the complainants to indemnify the defendants when the receiver was appointed. There was a judgment for plaintiff and the court reversed it. There was a statute permitting an appeal from the order appointing a receiver. No appeal had been taken. The court said:

"The failure of the plaintiffs (the defendants in the equity suit) to object to the order, and in the event the objection was overruled, to prosecute their appeal as provided by the statute, *must be held to be an acquiescence by them in it so as to prevent them questioning its propriety upon final hearing of the case.* As inferentially sustaining the correctness of this proposition *Campbell v. Clafflin*, 135 Alabama 27, 33 Southern 275; \* \* \* Furthermore, it cannot be conceded that the decree dismissing the bill although finally disposing of the case on its merits, adversely to the complainants therein, at whose instance the receiver was appointed *ipso facto* discharged him. His *fractions* must be determined by a formal order of the court."

This case is analogous to that at bar. Under the federal statute the corporation might have appealed from the temporary orders. It did not do so and therefore, under the doctrine of the case last cited, *it must be held to have acquiesced in their propriety*; and this must be so for upon the bill *as filed* which alleged insolvency the District Court had jurisdiction under the decision of the Circuit Court of Appeals.

"It is the initial pleading rather than the facts as they afterwards developed, which determines the authority of the court to hear a cause."

15 C. J. Title Courts, section 169.

"A court has judicial power to hear and determine the question of its own jurisdiction it is not bound to dismiss the suit on a mere allegation but may inquire into the correctness of the averment. So it may receive testimony on a preliminary question to determine its jurisdiction."

11 Cyc. 701, 15 C. J. Title Courts, section 170, page 851.

And see *Moore v. New York Cotton Exchange*, 270 U. S. 593.

The District Court had control of the parties and, having such control it had power to determine its own jurisdiction and to retain the cause for that purpose *and in the meantime to protect the property*.

"Courts of Chancery as well as other courts in the various states which exercise a general jurisdiction in equity and the judges thereof \* \* \* have inherent jurisdiction to appoint receivers."

34 Cyc. 101.

The purpose is to protect the *res pendente lite* and there is no determination on the merits. *High on Receivers*, sec. 4 and 7.

In the memorandum (p. 249) the District Court expressly stated that the receivership established by the order of July 13, 1922, was for the purpose only of protecting the property pending final hearing.

This it would have the right to do under its inherent jurisdiction, aside entirely from the statute, even if its jurisdiction were questioned, so that the property might be protected until its jurisdiction was determined. Any other holding would mean that, although the court has judicial power to determine its own jurisdiction (having control of the parties) it would have no power to protect the property until that jurisdiction was determined. An absurd condition.

But in this case there was also acquiescence in the power of the court to make these provisional orders.

*In re Kayser's Estates*, 92 Minn. 444; 100 N. W., p. 214, an order had been made removing an executrix and appointing a receiver. This order was reversed. The court by order allowed the receiver \$1,000 for compensation out of the fund. The order was affirmed. The court said,

"It does not necessarily follow that he (the receiver) was discharged as receiver, and that the court lost jurisdiction of the subject matter because the judgment entered on April 8, 1901, reversed the order of the probate court and re-instated respondent as executrix of the estate. Whether a discharge follows determination of the suit depends on the exigencies of the case." *High on Receivers*, 33:

"\* \* \* Our conclusion is that, while the judgment reversing the order of the probate court had the effect of removing the necessity for his continuance it did not in itself discharge the receiver. It was the duty of the appellant at that time to close his account and be discharged."

In *Irelands v. Nichols*, 40 Howard Practice 85 (New York), the court said,

"In the present case, the appointment of a receiver was a provisional remedy in the action and ancillary to it \* \* \* (Just as in this case). According to the current authorities the entry of the judgment in favor of the defendant, had the effect of ending the functions of the receiver, but the receiver is not discharged thereby. The court may according to the exigencies of the case, upon good cause shown, either continue or discharge him by a further order. Upon an examination of the peculiar facts of this case I have come to the conclusion that the receiver should be discharged. I hereby appoint \* \* \* as referee to pass the accounts of the receiver and upon the confirmation of the referee's report the receiver will be required to pay over the funds, less all proper charges to \* \* \*"

And in *Simmons v. Shelton*, 21 Southern 309 (not officially reported), a receiver had been appointed upon a creditor's bill. The bill was dismissed and the receiver was required within a certain time to account "showing what property or money he has received in order that his receivership may be finally settled."

And in *Fountaine v. Mills*, Georgia, 36 Southeastern 428 (not officially reported), it was held that liens or claims against funds in the receiver's hands would be determined in that cause notwithstanding that the bill had been dismissed.

In *Pittsfield Nat. Bank v. Bayne*, 140 N. Y. 321, 35 N. E. 631, at p. 633, the New York Court of Appeals expressly said,

"We do not decide that in all cases where an order appointing a receiver, or an order directing funds to be placed in his possession, is reversed, no commissions can be allowed the receiver. There may be circumstances existing in any such case which would render it matter of discretion whether or not to permit commissions, etc., to the receiver, and with its exercise we would have no right of review, if not abused."

The Illinois Court in *Hughly v. Deane*, 168 Ill. 266, 48 N. E. 51, at p. 52, seems to consider the general rule to be that although a receiver may be improperly appointed his compensation is to come out of the property. The question in that case was whether the Chancellor had power, if he desired to exercise it, to tax the costs against a defeated party. It was held that in his discretion he had the right to do so, but in that case it was held that the complainant's bill was based upon a false and fraudulent claim.

It is submitted that there are two cases among those above cited within the principle of either of which, the

instant case falls. *Pagett v. Brooks*, 37 Southern 263, 140 Alabama 257, and *T. E. Hill Company*, 159 Fed. 73.

The proceeding under the New Jersey statute is analogous to bankruptcy. The statute is in effect a state bankruptcy act and the same reasons which warrant the appointment of a receiver in bankruptcy, *pendente lite*, warrant the court in appointing a receiver *pendente lite* in proceedings under the statute.

The subsequent adjudication in the course of the proceedings that the corporation is, in fact, solvent, or not a corporation subject to the provisions of the act, does not go to the propriety of the appointment of the receiver *pendente lite* for the court had jurisdiction to appoint receivers to preserve the status until the court should determine whether it had jurisdiction to go forward and divide the assets among creditors.

## VI.

### **THE CIRCUIT COURT OF APPEALS DECIDED NO PRINCIPLE OF LAW OF GENERAL APPLICATION AND THE MATTER WAS ONE OF FACT AND DISCRETION.**

It recognized the general principles of law laid down by this Court in *Lion Bonding Company v. Karatz*, 262 U. S. 640, 67 L. Ed. 1151; *Atlantic Trust Co. v. Chapman*, 208 U. S. 360, 52 L. Ed. 528. It decided the case upon a question of fact. An examination of the opinion of the Circuit Court of Appeals (p. 580) will indicate that it (p. 581) expressly recognized the general rule that when a court has appointed receivers of a corporation without jurisdiction to do so, costs and expenses of the receivership are not chargeable against the corporation but must be recovered, if at all, from the plaintiff in the suit. It then recognized the exception to that rule which is where the corporation has acquiesced in the jurisdiction of the

court when it appointed a receiver of a corporation to take over its assets. It then decided that as a matter of fact this case came within the exception. This is therefore the ordinary case. If petitioner's contention be correct the court below, having recognized the general principles of law laid down by this Court, has erred in its determination as to the facts. The matter is one of discretion and no court is better able, with a full knowledge of all the facts, than the Circuit Court of Appeals to exercise the discretion.

## VII.

The operations of the receivers resulted in benefit to the property of the corporation in value in excess of the amounts directed by the decree below to be paid by the corporation and to permit the corporation to take its property without paying the indebtedness of the receivers would be to permit the corporation to appropriate to its own use the services of the receivers and the monies of the creditors of the receivers including the holders of receivers' certificates.

### **Reply to Point V of Brief of counsel for petitioner.**

Counsel for petitioner, under his Point V, (p. 31) criticises the account of the receivers which was filed in obedience to the order of the United States District Court entered after the mandate from the Circuit Court of Appeals upon the first appeal (p. 279).

The criticisms now indulged in by counsel were before the Special Master and he reported (p. 424) on Exception No. 1, which was to the effect that the report and account were not sufficiently specific nor properly itemized:

"It would have been quite impossible for them to have submitted a more specific report with each account itemized without preparing a complete transcript of their books and records, or submitting the books and records themselves."



On Exception No. 2, which was to the effect that the vouchers in support of the disbursements for which credit was claimed were not produced, the Special Master said:

"There were more than one thousand vouchers in the form of cancelled checks, and that the receivers could not properly submit all of these with their report. I found all of these vouchers were properly numbered, filed in numerical order, and corresponded with the items of disbursement set forth in the cash book as each disbursement was made."

On Exception No. 3, which was to the effect that the analysis of cash receipts for the period of May 11, 1922, to Jan. 31, 1924 was not sufficient the Special Master said:

"All of the books of account kept by the receivers were received and marked in evidence, that said books were kept in orderly manner and set forth in detail each item of cash receipt, and date of receipt, and the reason therefore and the source of the same."

Upon Exception No. 4, which was to the effect that the analysis of cash disbursements was insufficient because vouchers were not submitted, etc. the Special Master said:

"That in this case as well as in that of the cash receipts referred to heretofore, it would have been impracticable for the receivers to attach to their report bills or invoices in support of each disbursement, as said bills ran into the thousands. \* \* \* I find that the receivers have a bill or invoice to support each disbursement as recorded in the cash book, said bills being numbered as received and filed numerically in orderly manner."

Generally the Special Master said (p. 426):

"\* \* \* the receivers were examined at length as to their conduct of the business, their knowledge of the operation of the plant and in particular as to their knowledge of the repairs and improvements to the plant; and I find and report that the business was conducted under the personal supervision of the receivers, who, were, at the hearing March

11th, able to state the position and duties of practically every employee whose name appeared in the payroll book, and at the hearing of March 22d, gave a detailed statement from memory of all the repairs made in the plant during their administration."

Finally the Special Master reported (p. 427):

"1. That the report and account made by Alfred L. Kirby and John P. Duffy as receivers of the defendant corporation pursuant to an order by this court made on the 24th day of January, 1924, is true and correct, and in strict conformity with their books of account, invoices, vouchers and other records here in evidence.

2. That the books of account as kept by the receivers are most complete, and their entire accounting system unique, in that, the receivers on order were able to immediately produce invoice and voucher to support any cash disbursement or receipt as selected at random by counsel.

3. That the disbursements made by the receivers, particularly for improvements and repairs, were made so that the plant might be continued in operation, and were made under the supervision and advice of the Mashek Engineering Company, the designers and builders of the plant.

4. The operation and conduct of this business under their receivership has resulted in benefit and profit to the stockholders and creditors to the amount of at least \$49,008.41, as shown by Exhibit 1 of April 11, 1924, a copy of which is attached hereto."

A summary of the operations of the receivers, based on the record, was submitted to the United States District Court at the time it made its decree, December 19, 1924, (p. 565) which summary was also submitted to the Circuit Court of Appeals upon the appeal and is now printed as an addendum to this brief.

From it and from the report of the Special Master it appears that the corporation and its property has, by reason of the operation of the receivership and the expenditure of moneys by the receivers, raised by the issuance of receivers' certificates in part, and as a result of the incurring of debts by the receivers, now unpaid, benefitted to an extent in excess of the amount which the corporation has been directed by the decree below to pay. In other words, there has been created by the receivers a fund which is locked up in the property of the corporation, in the improvement of which, etc. the moneys have been expended.

To permit the corporation to take back this property, benefitted as it has been by reason of the expenditure of these moneys by the receivers, and the debts incurred by the receivers, would be to permit the corporation to appropriate to its own use the services of the receivers and the moneys of creditors of the receivers, including the holders of receivers' certificates, who advanced their moneys upon the faith of orders of the United States District Court not appealed from, and this result would be accomplished because the Circuit Court of Appeals in the order reversing the decree of the United States District Court appointing permanent receivers used the expression "lack of jurisdiction."

The allowances which were made to the receivers and to counsel were conceded in the District Court and in the Circuit Court of Appeals to be fair, and it is so recited in the decree (p. 565). The amendment of the decree (p. 567) was for the purpose of making it clear that, while counsel for petitioner did not object to the *amount* of the allowances to the Special Master for his report or to the receivers or to counsel, he objected to *any* allowance being

made "in view of the mandate of the Circuit Court Appeals."

It is respectfully submitted that the decree brought by the writ of certiorari should be affirmed.

Respectfully submitted,

MERRITT LANE,  
Of Counsel with Respondents.

JOSEPH L. SMITH,  
Of Counsel.

**ADDENDUM, being a summary of the operation by the receivers and the effect thereof.**

1. The receivers were appointed on May 11, 1922, and have been in charge of the affairs of the company one year and five months, or seventeen months.
2. In following out the suggestion of the court that the receivers continue the business, "owing to the coal shortage and the prospects for good business," it was obviously necessary (in running an industry of this size), for the receivers to give their entire time and attention to the business.
3. The receivers have been operating under the temporary orders of May 11th and July 13th *from which no appeal was taken*, and necessarily incurred obligations usual in the operating of a business. Had an appeal been taken from the temporary orders, the receivers would have been restrained from running the business pending decision on appeal and naturally would not have incurred obligations or given their entire time and attention to the business.
4. No appeal was taken excepting from the order of December 22, 1922, making the receivership permanent, and the receivers have never operated under this final order, but as this final order was made five months after the receivers actually started operation at the plant producing briquettes and had incurred obligations, it was necessary for the receivers to continue under the temporary orders.
5. An appeal from the final order of the court was only taken after the Board of Directors had failed in every other effort to ruin their own business. We refer first to the order to show cause, filed May 18, 1922, which restrained the receivers from taking any further action with respect to the property of the defendant company until the order of July 13th was made ordering the re-

ceivership continued. Two valuable months in which repairs should have been made to the plant were thereby lost as a result of action by the Board of Directors. And we refer secondly to the action of the President, F. M. Crossman, and his Board of Directors in having the company thrown into bankruptcy on October 5, 1922, which action made it necessary for the receivers to cease purchasing raw materials for almost two months thereafter. This action caused an incalculable loss to the company, as the receivers, on advice of counsel, did not resume the purchase of raw materials, with the result that the coal dust was delivered to the receivers in frozen condition, costing thousands of dollars to unload the cars and in demurrage charges, and the receivers were never able to operate the plant to capacity thereafter owing to the frozen condition of the coal dust.

6. When the receivers took charge there was neither money, organization, raw materials, or a workable plant, any one of which items is requisite to the proper conduct of a business. Yet in spite of this handicap and the opposition of the Board of Directors, as stated above, and an actual operating loss of \$14,261.84 by the management sustained during the period January 1, 1922, to May 11, 1922, *the receivers did actually conduct the business successfully and at a profit for the year 1922*, in that on December 31, 1922, the entire loss for the current year January 1st to December 31, 1922, was only \$16,452.03. This loss included an item of Reserve for Depreciation amounting to \$25,575.26, whereas if the receivers had not carried this item of depreciation a net profit of \$9,123.23 would have been the result. We say that the receivers operated the plant successfully and at a profit because they were in charge of the plant only 7½ months, and owing to the restraining order, were permitted to operate only 5½ months, and started with a loss of \$14,261.84 as aforesaid.

7. Before the appointment of receivers this company was managed by a General Manager, Mr. Crossman, whose salary was \$250.00 per week; a Plant Manager, Mr. Yosten, whose salary was \$100.00 per week; a Treasurer, Mr. Rodeman, whose salary was \$50.00 per week; a Chemist, whose salary was \$40.00 per week; a Plant Engineer, whose salary was \$50.00 per week; a Foreman, salary \$45.00; Yard Superintendent, salary \$42.50; Weight Master at \$30.00 per week; Bookkeeper at \$30.00 per week, and Telephone Operator at \$12.00 per week.

8. Since the appointment of receivers the plant has been operated under the management of the receivers, who had as their assistants, one Office Manager, one Bookkeeper and one Plant Superintendent, whose salaries aggregated \$170.00 per week.

9. Under the original management the loss for the year 1920 amounted to \$77,016.38, without any charge for depreciation and under this same management for the year 1921 the operating loss increased \$90,334.72, although this item included a charge for depreciation \$47,888.99. This depreciation covered a period of two years and thereafter if entered on the books of the company at the proper time, the loss for the year 1920 would have been \$100,960.87 and for the year 1921, \$66,390.23. Comparing these actual losses with the loss for the year 1922 under receivership, viz., \$18,452.03, it is evident that the company has been operated under the receivership far more successfully than ever before.

10. The receivers have improved the product, increased the sales and received more money for the goods than ever before, as showing the following tabulations:

Year	Output Tons	Income from Sales	Rate Per Ton
1920	21,049	\$191,132.95	\$ 9.08
1921	16,119	\$133,387.30	\$ 8.27 $\frac{1}{2}$
1922	17,883	\$179,163.81	\$10.02
Jan. 1st to Oct. 1st, 1923	14,291	\$143,947.56	\$10.07

11. Under the old management the sales of briquettes from January 1st to October 1, 1921, amounted to 8,927 tons. From January 1st to October, 1922, 7,229 tons, and from January 1st to October 1, 1923, 14,291 tons; so it is evident that the receivers have increased the sales 100% over last year.

12. Owing to the coal shortage during the winter 1922 and 1923, the receivers naturally had a great opportunity to dispose of their entire production, yet the condition of the plant was such that continuous operation was a physical impossibility, and whereas with two shifts of men working ten hours each, or twenty hours per day, there were from August 1, 1922, to March 15, 1923, 4,540 working hours, the plant was only in operation 1,880 hours; in other words, 50% of the time. The balance of these possible working hours were spent in repairs to the machinery.

13. Prior to appointment of receivers, Mr. Crossman by agreement was entitled to receive 15 cents per ton on all briquettes sold by the company and shortly after appointment of receivers, they notified Mr. Crossman that they would not use the so-called "Cross Formulae" and therefore would not be responsible for any royalties that he might consider himself entitled to. By this action, the receivers saved for the stockholders and creditors up to October 1st this year, royalties that he might consider



himself entitled to. By this action, the receivers saved for the stockholders and creditors up to October 1st this year, royalties on 28,732, or \$4,309.80.

14. Up to September 1, 1923, the improvements and addition to machinery and buildings of the company made by the receivers amounted to \$53,438.06.

15. The receivers have increased the current assets \$18,022.38.

16. The receivers paid out \$2,560.89 to cancel the mortgage on the vacant lot adjoining the plant.

17. The receivers paid city taxes for the year 1921 amounting to \$5,177.36.

18. The receivers have paid out for insurance of all kinds the sum of \$5,180.71.

19. The receivers paid the interest on the mortgage that were sold for cash, the amount being \$280.00.

20. For discount and interest on receivers' certificates the sum of \$2,394.26.

21. The receivers paid out in extraordinary expenses that would not ordinarily be incurred in the general operation of a business, more than \$9,000.00, which item included the cost of investigation of the affairs of the company by certified public accountants, payroll for employees retained by the receivers when the restraining order of May 11th was in effect, demurrage caused by bankruptcy proceedings, etc.

22. It is evident, therefore, that as a result of operation of this company by the receivers the amount of \$100,363.16 was accumulated.

23. On October 1, 1923, the receivers owed in accounts payable \$19,198.18, and notes payable \$4,452.25, and on receivers' certificates \$25,000, advance payments on orders \$3,463.94, making a total of \$52,114.37. There was

still another item of indebtedness, the amount of which was unknown to the receivers, and that is the services of attorneys in Delaware, engaged by the receivers in the bankruptcy action.

24. On October 10th, the receivers paid off one note of \$1,500.30, and on the 15th, a note of \$2,600, so there is notes payable at the present time of only \$351.94.

25. From the above figures it appears that the creditors and stockholders of this company as a result of the management under receivership have been benefitted in one way or another up to the present time in an amount of at least \$50,000.

26. The active demand for the product of this company begins October 1st and ends about March 1st, so it must not be forgotten that the receivers have been in charge of the plant eleven months of slack period and only five months when the demand is greatest.

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# SUPREME COURT OF THE UNITED STATES.

No. 227.—OCTOBER TERM, 1926.

Burnrite Coal Briquette Co., Petitioner, } On Certiorari to the United  
vs. } States Circuit Court of  
Edward G. Riggs, et al. } Appeals for the Third  
Circuit.

[May 2, 1927.]

Mr. Justice BRANDEIS delivered the opinion of the Court.

This suit was brought in the federal court for New Jersey against the Burnrite Coal Briquette Company, a Delaware corporation, by Riggs, a stockholder. The bill charged gross mismanagement; prayed for the appointment of a receiver to conserve the assets; and asked, that "if deemed advisable" the court "proceed under the statutes of the State of New Jersey . . . and that the receiver be given all the powers and be charged with all the duties imposed upon such a receiver by the statutes." Upon the filing of the bill, receivers were appointed, action by the corporation was enjoined, and an issue of receivers' certificates was authorized, all *ex parte*. After an elaborate hearing upon an order to show cause, the receivers were continued until final hearing. Upon final hearing, the charges of mismanagement were sustained and the receivership was again ordered continued,

"with all the powers vested in them by previous orders by this court made, and with all of the powers conferred upon receivers by an act of the State of New Jersey, entitled 'An act concerning corporations,' revision of 1896, its amendments and supplements thereto, and that the receivers continue to operate the business of said defendant corporation upon a re-organization or re-adjustment of the affairs of said corporation or such disposition as may be hereafter directed to be made of the affairs of said corporation by this court."

The Court of Appeals reversed the decree entered upon the final hearing and directed that the bill be dismissed for want of jurisdiction. The decision was not rested upon the ground that a State cannot enlarge the remedial right to proceed in a federal court

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sitting in equity, see *Pusey & Jones Co. v. Hansen*, 261 U. S. 491; nor upon the ground that a State cannot modify the substantive rights of a stockholder as against a foreign corporation merely because it happens to have property within the State. Compare *Maguire v. Mortgage Co.*, 203 Fed. 858. The reversal was placed solely upon the ground that the corporation had been found by the District Court solvent at the time of the filing of the bill; that the statute of New Jersey, as interpreted by its courts, conferred no power upon its own courts to appoint receivers of foreign corporations unless they were insolvent; and that the jurisdiction of the federal court was determined by that of the state courts. 291 Fed. 754.

After the coming down of the mandate, directing dismissal for want of jurisdiction, the District Court allowed the account of the receivers who had been active during a period of nearly two years; directed payment by the corporation of the receivers' obligations then outstanding, their expenses, the costs, and compensation for their own services and those of their counsel, amounting in all to nearly \$80,000; declared these amounts a lien upon the corporation's property; and ordered that, in default of payment, the property be sold to satisfy the charges. Upon a second appeal, that decree was affirmed by the Court of Appeals. 6 F. (2d) 226. The corporation contended that since the District Court was held to be without jurisdiction, it had no power to allow the account and order the payment out of the fund. *Lion Bonding and Surety Co. v. Karatz*, 262 U. S. 640, 642. This Court granted a writ of certiorari. 269 U. S. 547.

The main question for decision is whether, in view of the Court of Appeals' direction to dismiss the bill for want of jurisdiction, it was error to allow thereafter the receivers' account and direct the payment. There was an objection to the jurisdiction, which, if it had been seasonably taken, must have prevailed. *Camp v. Gress*, 250 U. S. 308. The plaintiff was a citizen of New York; the defendant a Delaware corporation; the federal jurisdiction rested wholly on diversity of citizenship; and neither party was a citizen of New Jersey. Thus, there was a sound objection to the venue. If that objection had been duly made, and had been insisted upon, an error of the lower court in overruling it could not justify charging the corporation now with payment of any charge on account of the receivership. But that objection to

the jurisdiction, being to the venue, could be waived. *Central Trust Co. v. McGeorge*, 151 U. S. 129; *Kreigh v. Westinghouse & Co.*, 214 U. S. 249, 252-253. And, before it was taken by the answer, it had been waived by a general appearance and other action. This was conceded.

The reversal with direction to dismiss for want of jurisdiction, ordered on the first appeal, was put upon an entirely different ground. The Court of Appeals held that there was lack of jurisdiction of the subject matter. It assumed that the jurisdiction of the federal court was dependent upon the state statute. This was error. A federal district court may, under its general equity powers independently of any state statute, entertain a bill of a stockholder against the corporation for the appointment of at least a temporary receiver in order to prevent threatened diversion or loss of assets through gross fraud and mismanagement of its officers.<sup>1</sup> There were allegations in the bill adequate to support a suit of that character; and there was nothing in the bill inconsistent with its being entertained as such. The only reference in the bill to the state statute was in one of its eleven prayers. After the waiver of the objection to the venue, there was federal jurisdiction over the parties and of the subject matter; and there was equity jurisdiction.

The fact that a bill seeking appointment of a receiver of a corporation is brought in a State other than that of the incorporation may lead the court to decline to interfere as a matter of comity or for want of equity; or it may require the court to limit the scope of the relief granted.<sup>2</sup> But the fact of incorporation under the laws of another State does not preclude jurisdiction.<sup>3</sup> If

<sup>1</sup>See *Dodge v. Woolsey*, 18 How. 331, 341-344; *Zeckendorf v. Steinfeld*, 225 U. S. 445, 459; *Citizens' Savings & Trust Co. v. Ill. Cent. R. R. Co.*, 205 U. S. 46; *Clark v. National Linseed Oil Co.*, 105 Fed. 787; *New Albany Waterworks Co. v. Louisville Banking Co.*, 122 Fed. 776; *Collins v. Williamson*, 229 Fed. 59.

<sup>2</sup>See *Leary v. Columbia River Nav. Co.*, 82 Fed. 775; *Sidway v. Missouri Land Co.*, 101 Fed. 481; *Parks v. Bankers' Corporation*, 140 Fed. 160; *Pearece v. Sutherland*, 164 Fed. 609; *Maguire v. Mortgage Co.*, 203 Fed. 858.

<sup>3</sup>Compare *Central Trust Co. v. McGeorge*, 151 U. S. 129; *Lewis v. American Naval Stores*, 119 Fed. 391; *Scattergood v. American Pipe Co.*, 249 Fed. 23; *Ward v. Foulkrod*, 264 Fed. 627; *Kynard v. McCarthy*, 3 F. (2d) 32; *See & Depew, Inc. v. Fisheries Products Co.*, 9 F. (2d) 235. Compare also *North American Land Co. v. Watkins*, 109 Fed. 101.

the dismissal directed by the Court of Appeals on the first appeal was proper (as to which we have no occasion to express an opinion), it must be justified on the ground that, in view of the facts, the District Court erred in its judgment in appointing and continuing the receivers. Compare *Chicago Title & Trust Co. v. Newman*, 187 Fed. 573, 576. In other words, the dismissal must rest on the ground that there was want of equity, not on lack of jurisdiction.

The District Court, assuming erroneously that it was without jurisdiction of the cause, based the order of payment solely on a supposed exception to the rule which denies to a court lacking jurisdiction the power to allow receivers' charges. According to the supposed exception, a party who has acquiesced and has thereby joined in misleading the Court into an erroneous exercise of jurisdiction, may not complain when he is, thereafter, saddled with the charges. And he will be held to have acquiesced, despite a challenge of the jurisdiction, if his challenge was placed wholly upon an untenable ground; for, by objecting only on the untenable ground, he may have misled the court as much as if he had not objected at all. The trial court rested its finding of acquiescence on the fact that, while vigorously opposing continuance of the receivership on other grounds, the corporation did not intimate a lack of jurisdiction until months after the appointment; that, aside from failing to object to the venue, it failed to appeal from the decree continuing the appointment of the receivers, when the case was heard upon the order to show cause; and that it stood by in silence while the receivers were borrowing and spending money upon its property, thus taking the benefit of their action. The assumption of the District Court in matter of law and its finding of fact were affirmed by the Court of Appeals.

We have no occasion to determine whether a federal district court which appoints a receiver in a case in which it necessarily lacks jurisdiction of the subject matter, so that jurisdiction cannot be acquired by acquiescence, may nevertheless impose upon the corporation, because of acquiescence, the usual charges incident to a receivership. For in the case at bar, the District Court had throughout jurisdiction of the subject matter. It is settled that where a receiver is appointed in a stockholders' suit by a federal court having jurisdiction, and the appointment is held on review to have been wrongly made, the Court may, in the exercise

of its judicial discretion, require that the receivers' charges be paid either by the corporation or by the unsuccessful plaintiff.<sup>4</sup> See *Palmer v. Texas*, 212 U. S. 118, 132; *Lion Bonding and Surety Co. v. Karatz*, 262 U. S. 640, 642. Compare *Atlantic Trust Co. v. Chapman*, 208 U. S. 360. And where a court, in the exercise of jurisdiction, has erroneously appointed a receiver, the acquiescence of the defendant may influence the court, in its discretion, to make the receivership expenses a charge upon the fund.<sup>5</sup> It was well within the discretion of the District Court to charge the fund in the case at bar.

We have no occasion to consider the contention, made as to a part of the charges, that they were incurred after the acquiescence had ceased and, hence, do not fall within the supposed exception above referred to. For the waiver of the objection to venue conferred upon the District Court complete jurisdiction of the cause, and the power to impose upon the corporation payment of the receivers' charges does not rest on acquiescence. There is no serious contention that any particular charge allowed was, in its nature or in amount, improper, or that in allowing it as a charge against the fund there was an abuse of discretion.

The contention that the first decision of the Circuit Court of Appeals directing dismissal of the bill for want of jurisdiction had become "the law of the case" and that, therefore, this Court must assume that the dismissal of the bill directed was properly a dismissal for want of jurisdiction, is groundless. *Messenger v. Anderson*, 225 U. S. 436, 444; *Diaz v. Patterson*, 263 U. S. 399, 402; *Davis v. O'Hara*, 266 U. S. 314, 321.

*Affirmed.*

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<sup>4</sup>See *Ferguson v. Dent*, 46 Fed. 88, 96-99; *Clark v. Brown*, 119 Fed. 130; *Beach v. Macon Grocery Co.*, 125 Fed. 513; *In re Lacov*, 142 Fed. 960; *In re T. E. Hill Co.*, 159 Fed. 73; *In re Aschenbach Co.*, 183 Fed. 305; *In re Wentworth Lunch Co.*, 191 Fed. 821; *In re Wilkes-Barre Light Co.*, 235 Fed. 807; *In re Independent Machine Corp.*, 251 Fed. 484.

<sup>5</sup>See *Clark v. Brown*, 119 Fed. 130; *In re Wilkes-Barre Light Co.*, 235 Fed. 807; *In re Independent Machine Corp.*, 251 Fed. 484. Compare *Dillingham v. Moran*, 81 Fed. 759; 101 Fed. 933; *Pennsylvania Steel Co. v. New York City Ry. Co.*, 198 Fed. 721, 725-734.